STATE OF MINNESOTA

IN SUPREME COURT

A21-0517

Hennepin County Thissen, J.

Maureen Ndidiamaka Onyelobi,

Appellant,

vs. Filed: November 10, 2021
Office of Appellate Courts

State of Minnesota,

Respondent.

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

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

S Y L L A B U S

Evidence cannot be newly discovered under the exception to the statute of limitations in Minn. Stat. § 590.01, subd. 4(b)(2) (2020), when the petitioner was admittedly present when the events the evidence purports to describe occurred.

Affirmed.

Considered and decided by the court without oral argument.

O P I N I O N

THISSEN, Justice.

A jury found appellant Maureen Ndidiamaka Onyelobi guilty of first-degree premediated murder on an accomplice-liability theory. The question here is whether the district court properly denied Onyelobi's petition for postconviction relief without an evidentiary hearing. This is Onyelobi's second postconviction petition. She based her current petition on an affidavit from her co-defendant, David Johnson. Johnson averred that, although Onyelobi was with him when he shot the victim, he did not communicate to Onyelobi his intent to kill the victim. Onyelobi argued that these statements are newly discovered evidence that cast doubt on her guilt. The district court concluded that the statements in the affidavit are not newly discovered evidence because Onyelobi knew of their substance at the time of the trial and, therefore, denied relief. Onyelobi filed this appeal. We affirm.

FACTS

In 2014, Onyelobi was charged with first-degree murder under an accomplice theory of criminal liability.[1] During trial, the State presented evidence suggesting that Onyelobi and her boyfriend, Maurice Wilson, supplied the victim with heroin. Wilson was arrested and charged in federal court with conspiracy to distribute heroin. During a recorded phone call, he asked Onyelobi and Johnson to "take care of" the victim to prevent him from providing inculpatory evidence.

[1] The facts of the murder are set forth in greater detail in our opinion in *State v. Onyelobi* (*Onyelobi I*), 879 N.W.2d 334, 339–42 (Minn. 2016).

The victim died from multiple gunshots to the head. A witness heard the gunshots and saw Onyelobi's van driving away from the victim's body, which was left on the side of the road. A search warrant was issued and executed for Onyelobi's storage locker. Investigators found incriminating evidence in the storage locker. The jury found Onyelobi guilty as charged and the district court sentenced her to life in prison without the possibility of release.

We affirmed her conviction on direct appeal in 2016. *State v. Onyelobi* (*Onyelobi I*), 879 N.W.2d 334, 339 (Minn. 2016). In 2018, Onyelobi filed her first petition for postconviction relief which the district court denied. We affirmed. *Onyelobi v. State* (*Onyelobi II*), 932 N.W.2d 272, 277–80 (Minn. 2019).

In February 2021, Onyelobi filed her second petition for postconviction relief, seeking immediate release or, in the alternative, an evidentiary hearing followed by a new trial. She argued that she was entitled to a new trial because she had newly discovered evidence casting doubt on her guilt: an affidavit from Johnson. The affidavit states in full:

> 1. My name is David Johnson.
> 2. On March 8, 2014, I shot and killed [the victim], in Minneapolis, Minnesota.
> 3. Maureen Onyelobi was with me when I went to the scene of the crime and when I shot [the victim].
> 4. At no point prior to my shooting [the victim], did I ever communicate my intent to do so to Maureen Onyelobi.
> 5. Based on my interactions with her, I had no reason to believe that Maureen Onyelobi knew that I intended to shoot [the victim].

According to Onyelobi, these statements show that she did not have the requisite intent for first-degree murder under an accomplice liability theory of criminal liability because she

did not know that Johnson intended to kill the victim. Because she was merely present for the murder, she argues, she is not criminally liable as an accomplice.

The district court denied Onyelobi's second postconviction petition without an evidentiary hearing. Relying on our decision in *Whittaker v. State*, 753 N.W.2d 668 (Minn. 2008), the district court concluded that the affidavit does not contain new evidence because Onyelobi personally knew the facts alleged in the affidavit at the time of her trial. The court further reasoned that allowing Onyelobi to secure Johnson's testimony after her trial—at which he was unwilling to testify—would violate "the spirit of *Knaffla*" and permit almost automatic retrials. Onyelobi appealed.

ANALYSIS

We review a district court's denial of a petition for postconviction relief for an abuse of discretion. *Campbell v. State*, 916 N.W.2d 502, 506 (Minn. 2018). We will not reverse unless the district court erred when applying the law, made clearly erroneous factual findings, or exercised its discretion arbitrarily or capriciously. *Rossberg v. State*, 932 N.W.2d 6, 9 (Minn. 2019).

Absent a listed exception, a petition for postconviction relief must be filed within two years after "the later of (1) the entry of judgment of conviction or sentence if no direct appeal is filed; or (2) an appellate court's disposition of petitioner's direct appeal." Minn. Stat. § 590.01, subd. 4(a) (2020). It is undisputed that Onyelobi filed this petition more than two years after her conviction became final.[2] Accordingly, the proper analysis is

[2] We decided Onyelobi's direct appeal on May 18, 2016. *Onyelobi I*, 879 N.W.2d at 339. Her conviction became final on August 16, 2016. *See Berkovitz v. State*, 826 N.W.2d

whether her claim satisfies one of the listed exceptions to the statute of limitations—specifically, the exception for newly discovered evidence under Minn. Stat. § 590.01, subd. 4(b)(2).[3]

To satisfy the subdivision 4(b)(2) exception, the petitioner has the burden to show that the evidence

> (1) is newly discovered; (2) could not have been ascertained by the exercise of due diligence by the petitioner or the petitioner's attorney within the 2-year time-bar for filing a petition; (3) is not cumulative to evidence presented at trial; (4) is not for impeachment purposes; and (5) establishes by the clear and convincing standard that petitioner is innocent of the offenses for which [s]he was convicted.

Riley v. State, 819 N.W.2d 162, 168 (Minn. 2012); *see* Minn. Stat. § 590.01, subd. 4(b)(2).

In cases where a postconviction petition was timely filed, we have held that evidence is not newly discovered under the test articulated in *Rainer v. State*, 566 N.W.2d

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203, 207 (Minn. 2013) (concluding that an individual's conviction becomes final 90 days after direct appeal when the individual does not file a petition for certiorari review). Therefore, any postconviction petitions became untimely two years later, on August 16, 2018. Onyelobi filed this postconviction petition on February 19, 2021.

[3] The district court erred by applying the test articulated in *Rainer v. State*, 566 N.W.2d 692, 695 (Minn. 1997), for assessing whether newly discovered evidence merits a new trial. The *Rainer* test evaluates the substantive claim for relief and is reached only when neither the statute of limitations nor *Knaffla* procedurally bars the claim. The *Rainer* newly discovered evidence test resembles the subdivision 4(b)(2) test, but the burdens of proof set forth in the final step of each test differ substantially. The more stringent subdivision 4(b)(2) test requires the petitioner to show that the newly discovered evidence proves actual innocence "by a clear and convincing standard," while the *Rainer* test requires a showing that the evidence would probably produce either an acquittal or a more favorable result. *Compare* Minn. Stat. § 590.01, subd. 4(b)(2), *with Rainer*, 566 N.W.2d at 695. *See also Roby v. State*, 808 N.W.2d 20, 27 n.6 (Minn. 2011) (holding that the district court's misapplication of the *Rainer* test was harmless error because a claim that fails under its lower burden of proof would certainly fail under the more stringent statutory test).

692, 695 (Minn. 1997), when the source of the information was present with the defendant at the scene of the crime, *Whittaker*, 753 N.W.2d at 671; *see also Evans v State*, 788 N.W.2d 38, 49 (Minn. 2010) ("Our precedent recognizes that if the source of the 'newly discovered' evidence was with the defendant at the scene of the crime, the first prong of the *Rainer* analysis is not met."). Accordingly, later statements of a witness about events that occurred when the postconviction petitioner was present are not "unknown." *Whittaker*, 753 N.W.2d at 671. This principle is true even when the witness did not testify at trial because the witness invoked the Fifth Amendment right against self-incrimination or for some other reason. *Id.* at 671–72.

This principle—evidence cannot be unknown when the petitioner was admittedly present at the time of the events the witness purports to describe—applies equally to the newly discovered evidence exception in subdivision 4(b)(2).[4] The first steps in the inquiry under the newly discovered evidence exception in subdivision 4(b)(2) and the test articulated in *Rainer* are substantially the same. *Compare* Minn. Stat. § 590.01, subd.

[4] Onyelobi does not challenge the analytical basis for the general principle articulated in *Whittaker*. Rather, Onyelobi's argument is that Johnson was never called to testify at Onyelobi's trial. As a result, Onyelobi argues, the principle that evidence cannot be unknown when the petitioner was admittedly present at the time of the events the witness purports to describe is inapplicable. She asserts that the principle narrowly applies to cases in which the postconviction affiant was *called* and then refused to testify at trial. We disagree. The principle that evidence cannot be unknown when the petitioner was admittedly present at the time of the events the witness purports to describe turns on the defendant's admitted *presence*. *Whittaker*, 753 N.W.2d at 671. The rationale is that a person who was admittedly present when an event occurred knows or should know the facts the witness described when the witness learned of those facts. That rationale applies regardless of whether the witness was called to testify and refused to do so or failed to testify for some other reason.

4(b)(2) (requiring the petitioner to allege "the existence of newly discovered evidence . . . that could not have been ascertained by the exercise of due diligence by the petitioner or petitioner's attorney within the two-year time period for filing a postconviction petition"), *with Rainer*, 566 N.W.2d at 695 (stating that a defendant seeking a new trial based on newly discovered evidence must prove that "the evidence was not known to the defendant or his/her counsel at the time of the trial . . . [and] could not have been discovered through due diligence before trial"). *See Riley*, 819 N.W.2d at 169 ("When a defendant has knowledge of the expected testimony at the time of trial, the testimony fails the legal [subdivision 4(b)(2)] test for newly discovered evidence."). There is no reason to apply the *Whittaker* principle to one inquiry and not to the other.

Here, it is undisputed that Onyelobi was present at the events Johnson's affidavit purports to describe. As the affidavit itself states, "Maureen Onyelobi *was with me* when I went to the scene of the crime and when I shot [the victim]." (Emphasis added.) Because Onyelobi was present for the events Johnson describes in the affidavit, she knew or should have known at trial that Johnson never communicated to her his intent to kill the victim. Under our case law, this is not "newly discovered" evidence.

Because the facts in Johnson's affidavit are not "newly discovered," Onyelobi's claim does not satisfy the newly discovered evidence exception under subdivision 4(b)(2). Accordingly, no exception to the statute of limitations applies. Therefore, Onyelobi's

untimely claim is barred by Minn. Stat. § 590.01, subd. 4(a), and she is conclusively entitled to no relief.[5]

CONCLUSION

For the foregoing reasons, we affirm the decision of the district court.

Affirmed.

[5] Because we hold that Onyelobi's postconviction petition, filed more than 2 years after her conviction became final, is time-barred under Minn. Stat. § 590.01, subd. 4(a), and no exception to the 2-year time-bar applies, we neither reach the question of whether Onyelobi's petition is also barred under the *Knaffla* rule nor express an opinion on that issue.