COURT OF APPEALS
DECISION
DATED AND FILED

September 30, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP132 **Cir. Ct. No. 2002CF2286**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LANDRIS T. JINES,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: DENNIS R. MORONEY, Judge. *Affirmed*.

Before Curley, P.J., Fine and Kessler, JJ.

¶1 FINE, J. Landris T. Jines appeals the orders denying his WIS. STAT. § 974.06 motion for postconviction relief and motion for reconsideration, arguing that newly-discovered evidence requires a new trial, nine years after a jury convicted him of attempted first-degree intentional homicide while armed and

possession of a firearm by a felon, both as a party to the crime and both as an habitual offender. *See* WIS. STAT. §§ 940.01(1)(a), 939.05, 939.32, 939.62, 939.63 and 941.29(2). Jines contends that the circuit court erred when it denied, without a hearing, his motions for a new trial based on two recantations from trial witnesses. We affirm.

I.

¶2 In April of 2002, the State charged Jines with attempted first-degree intentional homicide, while armed, and possession of a firearm by a felon, both as party to a crime and as an habitual criminal for shooting Kishon Bartee in April of 2000 outside the Capitol Court shopping mall. Rashad Junior, Jines's friend, was with Jines when he shot Bartee. Jines's first trial ended in a hung jury.

¶3 The State re-tried the case in March of 2003. At this trial, Milwaukee Police officer Branko Stojsavljevic testified that when he arrived at the crime scene, Bartee "was able to talk to me. I asked him who had shot him. He stated --in a weak voice he stated 'Lokie.' Lok or Lokie, something to that effect."

¶4 Rashad Junior testified:

- Jines's "nickname or street name" was "Lokie."
- He had a plea bargain in exchange for his testimony: he "pled guilty with respect to what's happened here [in] this case to a charge of aiding a felon," "pled guilty to a separate matter of carrying [a] concealed weapon," and he would be sentenced in April. (Junior read the plea bargain letter to the jury.)

- On the day of the shooting, Jines, Keiba Johnson, and a woman picked Junior up in Jines's Chevy Caprice and they went to the mall to "get some clothes." While Jines and Junior were shopping, Johnson and the woman stayed in the car. Shortly after Jines and Junior got to the store they wanted to shop at, Jines "received a phone call from Keiba Johnson" that Bartee "was pulling up in the parking lot."

- Jines and Junior "left the mall," and as they "walked past [Bartee's] car, Mr. Jines started shooting and shot the guy." Jines shot "Six, seven times." Junior was "ahead of" Jines.

- After the shooting, Jines and Junior "[r]an off, because" "Johnson pulled off in the car" "to [the] McDonald's parking lot." After Jines and Junior got to the car at McDonald's, they left.

- When Junior asked Jines "what happened" to Bartee, Jines said "he really hoped" he had killed Bartee.

- After the shooting, Turon Griffin, Jines, Junior and another person left Milwaukee and went to Alabama and Mississippi for "[t]hree weeks to a month" "because of what happened."

- Jines sent Junior a letter after both men had been arrested for the Bartee shooting, telling him to "maintain through all this bullshit" because "[t]hey case weak." "They ain't got nothing on us." "I never said that I think you went and talked to the DA. That's bullshit. I know you ain't cut like that. I did say you was looking shaky because when I use to see you in Bible study sometimes you

looked worried, but as far as anything else, dude made some of that shit up himself, really. He was making a lot of accusations and assumptions but those phone conversations ain't shit. It's all about proof and they can't prove nothing. They hoping they can get us to turn on each other or one turn on the other one, but I'm way sharper than that." (Formatting altered.)

- The motive for shooting Bartee was that Bartee's friend had shot Jines a week earlier.

¶5 Jines's lawyer cross-examined Junior eliciting testimony that:

- The State had originally charged him "as a co-actor with Mr. Jines" for the homicide, but then he got to plead to "aiding a felon" instead and that he is facing only "three, four years" in prison.

- Jines told Junior he wanted to "beat [Bartee's] ass" and Junior "would have helped out."

- Jines sold his Chevy Caprice to Johnson after the shooting.

- Junior told his girlfriend on a recorded jail telephone call that he needed to "'do the right thing to get me up,'" which means "get me out of the situation that I was in."

- The detective encouraged Junior to "[t]ell what happened."

- Junior was not "watching Mr. Jines shoot the whole time," but he "turned and looked."

- Junior knows he got a "great deal" by testifying against Jines.

¶6 Bradley Kurst, special agent for the Wisconsin Department of Justice, testified that two days after the shooting, he went to the hospital "to show [Bartee] photo line-ups of possible suspects in the shooting." When asked to "describe how you showed the photographs to Mr. Bartee and his response," Kurst testified:

> The photographs, the line-ups, the six photographs, color photographs, Mr. Jines was No. 5 in the line-up out of six, and Mr. Bartee had trouble talking. He had tubes in his nose. He had chest wounds, but he pointed to No. 5 in the photo array, which was Landris Jines. He stated, this Lowkey; he shot me.
>
> ….
>
> He said that he was sitting in a car with a girl looking at her. She looked surprised. He turned to see the man he identified as Lowkey standing with a gun outside his window and then he said, he shot me. He shot me. He shot me. He shot me.

¶7 Milwaukee Police Detective Scott Gastrow testified that:

- Bartee "positively identified the defendant, Landris Jines, … as the person who shot him" in a lineup at the police station in October 2000.

- "[I]n a post-line-up interview [Bartee told Gastrow] that the defendant was the person who shot him about seven times, striking him five, and he indicated that he had seen the defendant before around Capitol Court and that he had known that he had -- the defendant that is -- had a street name by the name of Lowkey."

¶8 Milwaukee Police Detective John Schoof testified that:

- "I was advised of a possible witness to this shooting, [John Jonas,] a Milwaukee Public School employee, who was at [a school] and I was advised that he had some information regarding the shooting."

- Jonas "gave me a yellow slip, like a postem slip, with a license plate on there" of VFV 116. Jonas recorded the license plate from a car leaving the McDonald's at Capitol Court because the two men in the back seat kept looking back out the window.

¶9 Bartee testified that:

- He was "sitting in a car at the Capitol Court Shopping Mall" with a woman eating when he "leaned back and happened to turn to the right, and I seen [Junior] and somebody. I seen, you know, somebody was on the side, but, you know, but I seen [Junior] over to my right and then I looked to my left, and I seen Lowkey, but I really -- You know, you know, it has been awhile. I really can't say what I seen. I can't really visualize, but once I turned back to think like, and the girl jumped out of the car and the shots went off."

- He knew Jines, a.k.a. Lowkey "[f]rom the neighborhood when we was young" but "really didn't know too much about" Junior before the shooting.

- As a result of the shooting, Bartee is paralyzed from the waist down and is in a wheelchair.

- When he was lying on the ground after the shooting, Bartee told the officer that, "[i]t was Lowkey."

When the prosecutor asked Bartee "Is there any doubt at all in your mind, Mr. Bartee, that this man, Landris Jines, shot you?" he answered "No." On cross-examination, Jines's lawyer asked Bartee, as material here:

> Q. [Junior is] pretty much the only person you could see; is that right?
>
> A. I don't remember.
>
> Q. Did you make any eye contact with Mr. Jines?
>
> A. I don't remember.
>
> Q. Now, while -- Did you see Mr. Jines actually do the shooting?
>
> A. I don't remember.
>
> Q. Did you see Mr. Junior fire any shots?
>
> A. I don't remember.
>
> ….
>
> Q. Did you see whether or not Mr. Jines had one or two guns?
>
> A. I don't remember.
>
> Q. Did you see whether or not Mr. Jines took off running after he shot?
>
> A. I don't remember.
>
> ….
>
> Q. Do you recall that you indicated to that detective that Mr. Junior stood by to act as look-out and was in a position to protect Mr. Jines, if needed?
>
> A. I don't remember.
>
> ….

> Q. Do you recall in that April 10th interview, again with those two detectives, indicating to them that Mr. Jines, who you identified in the interview as Lowkey, was standing next to the driver's side door of the car firing shots into the car?
>
> A. I don't remember.
>
> Q. Do you recall in that same interview that you indicated to those detectives that you did not know why Lowkey shot you other than Lowkey having problems with one of your friends?
>
> A. I don't remember.
>
> Q. Do you recall telling those two detectives that Mr. Jines was wearing a white short-sleeve T-shirt and blue jeans? Do you recall telling him that?
>
> A. I don't remember. It's been three years.

Jines's lawyer continued to ask additional questions and Bartee continued to give the same answer, "I don't remember."

¶10 Turon Griffin, Jines's best friend at the time of the shooting, testified for the State:

- He has known Jines and Junior for "[o]ver 10 years."
- In April of 2000, he went to Alabama and Mississippi with "Mr. Jines, Mr. Junior," and a third person.
- They took the trip because "Mr. Jines and Mr. Junior had gotten into some trouble here."
- Jines told him "[h]e had shot" "[a] dude name Kishon" "[a]t Capitol Court."

- Jines shot Bartee because a friend of Bartee had "shot Mr. Jines before."

- "He just told me that he was in the mall, and somebody had told him that [Bartee] was in the parking lot, and he just came out. When he came out the mall, he just approached his car and shot him."

- Jines told him not to use his street name anymore "[c]ause it's hot." "The name's hot. It's like he don't want to be identified by that."

- He identified Jines's Chevy.

- Jines asked him to "keep [Bartee] from coming to court whatever it took."

- Jines sold his Chevy to Johnson after the shooting.

¶11 During cross-examination, Jines's lawyer elicited the following:

- Junior told Griffin after the shooting that "he ain't do nothing. He just -- He was just -- He just was there."

- Jines and Griffin were best friends at the time of the shooting and he still considers them to be close friends.

- The State told Griffin if he testified, "they might help me with" "some Bail Jumpings and misdemeanor cases" I have, and "might recommend a low sentence."

- "[I]f I come in and tell the truth, that maybe they would be able to help me out on other cases."

¶12 John Jonas testified:

- On the day of the shooting, he was driving near Capitol Court and he "noticed two males running through the Capitol Court parking lot."
- He saw "them getting into a vehicle" at McDonald's.
- The car was "like burgundy, purple" "a larger four-door, like a large body Oldsmobile or Chevy, something like that."
- When the car passed Jonas's truck, he noticed the two males looking back and he "got the license plate number," called the police and gave it to the police detective who came to the school where he was working.

¶13 Jines's defense was that he was not at the mall the day of the shooting. He testified that he was not at Capitol Court Mall on the day of the crime, and he did not shoot Bartee. He also testified that he bought the Chevy identified as the shooter's car on January 27, 2000, but sold it to Johnson three weeks later in February of 2000 because Johnson liked it and Jines needed the money.

¶14 Keiba Johnson testified for the defense. He told the jury:

- On the day of the shooting, Jines picked him up in his Chevy Caprice and together with Junior and a woman, went to the Capitol Court Mall.
- He did not know Bartee, did not have a cell phone, and did not call Jines to tell him Bartee was in the parking lot.

- He drove to McDonald's when he heard gunshots and Jines and Junior got in the car at McDonalds ten-to-fifteen minutes after the gunshots.

- He bought the Chevy Caprice from Jines in the "middle of April or May."

- He did not pay Jines for the car; rather, they swapped cars and Jines paid him an extra $600 because Johnson "had some rims" on his car.

¶15 In April of 2003, the jury convicted Jines of both charges and the trial court sentenced him to thirty-five years of initial confinement and fifteen years of extended supervision on the attempted homicide count and two years of initial confinement followed by three years of extended supervision on the firearm count, to be served concurrently. After a series of appeals not material here, Jines filed a postconviction motion in June of 2012, contending newly-discovered evidence required a new trial because Bartee and Griffin had recanted their trial testimony. Bartee signed an affidavit prepared by Jines's lawyer attesting, as material:

- "For several years, I have wanted to correct certain statements that I made in my statements to police and in my trial testimony."

- "Seconds before the shooting, I saw the face of Rashad Junior in the area behind the car I was in, along with another person I could not see well. I did not know Rashad Junior by name, but I recognized Rashad Junior's face from seeing him in and around my neighborhood with his cousin, Landris Jines. I knew Landris Jines by the nickname 'Lokey.' Because I had always seen Junior and

Jines together, when I saw Rashad Junior, I assumed Jines was the other person with him behind my car. However, I did not actually see Landris Jines in the area before, during or after the shooting."

- "When police came to help me after the shooting, they asked who shot me. I told them Jines' nickname, 'Lokey,' because I did not know Rashad Junior's name, and because I thought that if Rashad was present, then 'Lokey' must have been with him. Because I had been shot, it was the only information I could give police at the time."

- "I did not want to speak with police about the shooting because I really didn't know who shot me, and I was confused about the events."

- "I did not recall seeing Jines at the time I was shot. However, because I assumed that Jines was present at the shooting, and because I had heard rumors that Jines admitted to the shooting, I told officers that I saw Jines shoot me."

- "Det[ective] Huston pressured me to cooperate and to testify that Landris Jines shot me. Huston told me that Jines was a very dangerous, very bad guy with a long criminal record, and that he (Huston) wanted to get Jines off the street. Huston also told me that he had heard that Jines had admitted to the shooting."

- "Because I assumed that Jines was present at the shooting, because I was told that Jines admitted to the shooting, and because of the

pressure from Det[ective] Huston, I agreed to testify that Jines shot me."

- "After I used Lokey's name, and heard rumors that Lokey admitted to shooting me, I continued to tell police and others that I saw Jines when I was shot. To this day, I do not know who actually shot me, and I do not know whether Jines was actually present when I was shot."

- "I believe that all of my testimony [from April 2003 trial] is truthful, except where I stated that I saw 'Lokey' near my car and that I knew 'Lokey' shot me. I did not see Landris Jines at the time I was shot, and I did not see the person who shot me."

- "I have wanted to come forward with this information for many years because I feel that it was wrong for me to add information that was not true."

¶16 Jines claimed that Griffin also recanted his trial testimony, but Griffin refused to sign an affidavit. So, instead, Jines attached an unsigned "Affidavit of Turon D. Griffin" and an affidavit from his postconviction lawyer swearing that "Griffin told me that the draft affidavit was accurate, but that he needed to seek legal advice before signing it." Griffin's unsigned affidavit attested, as material:

- "My trial testimony was not truthful. Jines did not admit to shooting [Bartee] or anyone else, and did not discuss the shooting with me. Jines, Junior, Winston, and I did not leave Milwaukee because of a

shooting; we traveled to Jackson and Biloxi Mississippi for Black College Spring Break."

- "I testified falsely because Det[ective] Brett Huston told me I had been charged in a sealed federal indictment for conspiracy to commit murder. He told me that I would receive a very long sentence in federal court because of my prior convictions, and that he could prevent me from being federally indicted if I agreed to testify against Jines. The threat was made before Jines' first trial, while I was defendant in a Milwaukee County misdemeanor case. I agreed to testify to avoid prosecution in federal court."

- "I did not testify at Jines' first trial because I was avoiding Det[ective] Huston and did not want to testify falsely."

- "After Jines' first trial, Det[ective] Huston visited me at the Milwaukee County House of Corrections in Franklin. Det[ective] Huston threatened that he could have me sent to prison if I refused to cooperate."

- "I have wanted to come forward with this information for many years because I feel that it was wrong for me to add information that was not true."

¶17 In its brief opposing Jines's motion, the State attached police reports of interviews with Bartee and Griffin asking about their recantations. The police report on Griffin, dated September 26, 2013, provided, as material:

> GRIFFIN cannot say today if [his trial] testimony was wrong as he has no recollection of the case details, or, his testimony at the time. With ten years passing, GRIFFIN

> cannot recall anything about the case. GRIFFIN couldn't say if his testimony was right or wrong as he no longer recalls the details, but told the truth at the time as he knew it. Today GRIFFIN cannot recall the smaller details such as the phone conversations with JINES. GRIFFIN knows they talked by phone after the shooting, but cannot recall what was said during the conversations. GRIFFIN can recall going to Mississippi with JINES and friends as "JINES was hot for the shooting", but not whose idea it was to go down South. GRIFFIN can recall the shooting was the result of an on[-]going dispute between their group and the victim Kishon BARTEE'S group, and BARTEE had shot JINES prior to JINES shooting BARTEE.
>
> GRIFFIN stated "what still bothers me to this day" is the amount of time JINES received for the shooting….
>
> ….
>
> GRIFFIN stated he wants no part of a re-trial as he has moved on with his life, and is no longer on the streets. GRIFFIN is now a self-employed importer of tropical fish, and works out of his residence. GRIFFIN stated he could not testify today as he has no memory of the event as it was over 10 years ago, and could not confirm or deny what he said in the original trial.

¶18 The police report on Bartee, dated September 27, 2013, recounts in pertinent part:

> I told BARTEE that I understood he signed a statement saying (JINES) didn't shoot him.
>
> BARTEE said, "No, it…no, my statement is that… I don't know if I really seen'd him. Like, and that's my thing, like, I don't, I didn't want to convict nobody I didn't know if I really, really, really, really, seen'd him, 'cause I didn't. I thought I saw him, but I can't put it on point that I saw him."
>
> BARTEE recalled that he had pressure on him, he was nervous he was scared. He was confused and all over the place.
>
> He admits telling police/ambulance personnel at the scene that "Lok" shot him during initial investigation.

¶19 When the detective asked about how Jines's new lawyer found Bartee, Bartee said it was through a man named "James" and when asked if he thought "James" came on behalf of Jines, Bartee said, "I kind of thought about that, at first." "Because of how it went down, it was kind of scary." "(JINES) knows a lot of people out here, and in jail." Then the detective "recapped how 'James' came to BARTEE, and BARTEE said, yeah, it was out of the blue and kind of threw me off a little bit. I didn't expect it." The report continued:

> I asked if "James" said he was related to Lok (JINES), BARTEE said he was kind of thinking it. BARTEE said he was kind of nervous, he just wiped it off and kept it moving.
>
> I later asked if BARTEE was made to feel threatened by anyone if he didn't change his story. He paused for a long period of time and didn't answer. I then rephrased the question, basically asking if "James" came to him out of the blue, knowing about the shooting, did that make BARTEE nervous. BARTEE said, "It was kind of creepy, a little bit. It was kind of creepy. Because I'm in the chair. I feel safe, but still feel a little nervous." BARTEE then said, what I said, didn't have anything to do with them coming to me.
>
> Regarding his original testimony, BARTEE said no one asked him to lie. BARTEE said he's not saying (JINES) wasn't the one who shot him, just that he's not sure. He recalls telling that Lok shot him, and the detectives bringing pictures to the hospital.
>
> BARTEE said he wasn't []100 [percent] sure. He became very emotional, choking and tearing up while recalling the shooting.

¶20 The trial court denied the motion by adopting the State's brief. In its order denying Jines's motion for reconsideration, the trial court explained its ruling:

> The court also declines to hold an evidentiary hearing based on the signed and unsigned affidavit of the two witnesses Bartee and Griffin, respectively. Although

> the court agrees that it cannot judge their credibility on paper, it reaches the same result: there is not a reasonable probability that a jury looking at both the trial testimony and the recantation(s) would have a reasonable doubt about the defendant's guilt.

(Footnote omitted.)[1]

II.

¶21 Jines argues that Bartee and Griffin's recantations after his conviction created newly-discovered evidence. We recently addressed in ***State v. Ferguson***, 2014 WI App 48, ¶¶24–33, 354 Wis. 2d 253, 266–277, 847 N.W.2d 900, 908–912, whether a recantation satisfies the newly-discovered evidence test.

¶22 To warrant a new trial, the recantations must meet five requirements: (1) they must have been discovered after conviction; (2) Jines must not have been negligent in discovering them; (3) they must be material to an issue in the case; (4) they must not be cumulative; and (5) the recantation[s] must be corroborated by other newly discovered evidence. *See* ***id.***, 2014 WI App 48, ¶25, 354 Wis. 2d at 268, 847 N.W.2d at 908 (quoted source omitted). Corroboration exists when: "'(1) there is a feasible motive for the initial false statement; and, (2) there are circumstantial guarantees of the trustworthiness of the recantation.'" ***Id.***, 2014 WI App 48, ¶25, 354 Wis. 2d 253 at 269, 847 N.W.2d at 908 (quoted source omitted). And, of course, a new trial is only required when "a reasonable probability exists that a different result would be reached in a [new] trial," ***State v. McCallum***, 208 Wis. 2d 463, 473, 561 N.W.2d 707, 711 (1997), because recantations are inherently unreliable, ***id.***, 208 Wis. 2d at 476, 561 N.W.2d at 712.

[1] Jines raised a DNA testing issue with the trial court but does not raise that issue on appeal; therefore, we do not address it.

¶23 Here, assuming without deciding that the alleged recantations met the first four factors, we address whether the alleged recantations satisfy the corroboration factor. Jines proffers as a feasible motive for both Bartee's and Griffin's "initial false statement[s]" that they felt pressure from police to say Jines shot Bartee. We disagree that corroboration exists for either alleged recantation.

1. Bartee

¶24 The problem with Jines's contention that police pressure created a feasible motive for Bartee's initial false statement is that there was no police pressure when Bartee made his initial statement at the scene of the crime that "Lowkey" shot him, and he does not allege that that accusation was made because of alleged police pressure in connection with that early accusation. Thus, the alleged "motive" of alleged police pressure fails.

2. Griffin

¶25 Griffin's recantation is equally problematic. First, it is not sworn testimony. Second, Jines has offered no factual basis as to what alleged federal charges gave him a motive to testify falsely. Further, the alleged recantation comes nine years after the trial testimony, and is contradicted by the statement he gave police when questioned about his recantation. Moreover, Griffin told the officer that he had always been bothered by the lengthy sentence imposed on his friend; this suggests a very different motive for Griffin's alleged recantation. Griffin's recantation is not corroborated "by other newly discovered evidence."

¶26 Finally, based on our lengthy recitation of the Record, we agree with the trial court's conclusion that "there is not a reasonable probability that a jury looking at both the trial testimony and the recantation(s) would have a reasonable

doubt about the defendant's guilt." As we have seen, other witnesses' testimony clearly establish Jines as the shooter: (1) Rashad Junior, Jines's good friend, testified that Jines shot Bartee, said he hoped Bartee was dead, skipped town to avoid getting caught, sold his car used at the scene, told people to stop calling him Lowkey, and told the jury why Jines shot Bartee (a revenge shooting because Bartee's friend had shot Jines earlier); (2) Keiba Johnson, who was Jines's witness, testified that Jines was at the mall that day and ran to the car at McDonalds after the shooting; (3) citizen witness, John Jonas, testified that he saw two black men running toward the car at the McDonalds and got the license plate of the car, which was traced to Jines. Jines, on the other hand, testified he was not at the mall that day. There is no reasonable probability that a reasonable jury looking at both the recantations and the original accusations would have reasonable doubt as to Jines's guilt.

By the Court.—Orders affirmed.

Publication in the official reports is not recommended.