COURT OF APPEALS
DECISION
DATED AND FILED

March 27, 2007

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2005AP1324-CR **Cir. Ct. No. 1996CF960232A**

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

STATE OF WISCONSIN

PLAINTIFF-RESPONDENT,

V.

MYRON ELCADO EDWARDS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and orders of the circuit court for Milwaukee County: PATRICIA D. MCMAHON and RICHARD J. SANKOVITZ Judges. *Affirmed*.

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

¶1 WEDEMEYER, P.J. Myron Elcado Edwards appeals from a judgment entered after a jury found him guilty of two counts of first-degree intentional homicide, one count of attempted first-degree intentional homicide,

one count of attempted armed robbery and five counts of armed robbery, all as party to a crime, contrary to WIS. STAT. §§ 940.01(1), 943.32(1)(a) & (2), 939.32, and 939.05 (1995-96).[1] Edwards also appeals from orders denying his postconviction motions. He raises six issues of error on appeal—whether: (1) there was sufficient probable cause to arrest him; (2) his motion to suppress should have been granted based on the failure to honor his request for an attorney during interrogation; (3) his statements to police were coerced and therefore should have been suppressed; (4) the trial court erred in denying his motion to sever; (5) the trial court erred in denying Edwards's motion to strike a juror during *voir dire*; and (6) he received ineffective assistance of counsel. Because we resolve each issue in favor of upholding the judgment and orders, we affirm.

BACKGROUND

¶2 This case followed the arrest of Edwards for an armed robbery at the Mitchell Street Bank on January 3, 1996. Immediately after the robbery, the police followed a trail of money, dye and footprints in fresh snow from the bank to a home at 1823 South 17th Street. Milwaukee Police Officer Marcus Switzer responded to the call and noticed two black males, dressed in dark clothing in the 1800 block of South 17th Street. The two men matched the description of the individuals who had just robbed the bank two and a half blocks away. Switzer also found it suspicious to see the two black men in an area that is predominantly white and Hispanic. Switzer, dressed in plain clothes, approached the men on foot. He stopped them in front of 1823 South 17th Street. One of the men (later

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

identified as Willis Dortch), went to the back of the house. Switzer asked the second man, identified as Marteze Harris, what he was doing in the area. Harris responded that he had just purchased a money order from the bank. Dortch then returned to the front of the home and Switzer placed both men under arrest.

¶3 Officer Michael Cameron also responded to the bank robbery dispatch and was told by bank employees that the robbers had run southbound on 17th Street from Mitchell Street. Cameron proceeded in that direction and located a trail of dye packs and money stained with dye which led from the bank area to 1823 South 17th Street. There was also a trail of footprints in the freshly fallen snow along the same path. Police also noticed fresh footprints leading from the front of the house to the back. The police also discovered an exploded dye-pack and stained money in a plastic bag in a garbage can at the front of the home.

¶4 Cameron and another officer, Jerold Terek, went to the back of the home where they noticed footprints leading down to the basement apartment of the home. When the officers went down the steps to that apartment, they heard a woman's voice and several other voices, which they believed to be black men. They heard one male voice say, "[W]e really fucked up this time." When the officers knocked on the back door, a woman, identified as Sharanda Dortch, answered and told police she was home alone with her children. The police then announced themselves as police officers and entered.

¶5 As they entered, a black male, identified as Edwards, came down the stairs and was arrested. A second black male, identified as Baron Walker, was found upstairs lying on a bed. He was also arrested. Edwards and Walker were then taken back to the bank for an on-scene line-up. A citizen who was on the street immediately following the robbery stated that Edwards and Walker looked

similar to the persons that had run past him on the street. Bank teller Cynthia LaFave stated that Edwards was the gunman in the robbery. Bank teller Patricia Herron indicated that Edwards was the person who came to the counter and took money during the robbery. Edwards and Walker were then taken to the station for questioning.

¶6 During the questioning, Edwards confessed to committing this bank robbery as well as five other armed robberies over the past three weeks, including a liquor store, two other banks and a video store. During the liquor store robbery, the store owner was shot and killed. During the video store robbery, a security guard was shot and killed and a patron was shot and left for dead.

¶7 As a result, Edwards was charged with the crimes referenced above. He pled not guilty and filed a motion seeking to suppress his statements on the grounds that there was no probable cause to arrest him, his request for an attorney during questioning was ignored, and his statements were not voluntary, but were coerced by police. The trial court conducted a ***Miranda-Goodchild***[2] hearing, following which his motion to suppress was denied.

¶8 The case was set for a jury trial. During *voir dire*, Edwards requested that one juror, whose brother was a police officer, be removed from the jury for cause. The following questioning occurred before the request to strike for cause:

> Q Also, with your brother being a police officer, you are also not sure if you could block that out as you decide the case, correct?

[2] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966); ***State ex rel. Goodchild v. Burke***, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

A I guess I would love and respect my brother a lot. I think he had does [sic] a good job. So I think he is right most of the time; therefore, the agency he works for is, probably.

THE COURT: Are you saying that if members of the police department take the stand and testify that, just because your brother is an officer, you will say, "Okay; they are telling the truth. I won't have to listen any further"? [sic]

A No; that's not true.

Q Would you listen to the testimony?

A I would listen to the testimony, and I would weigh it.

Q And you would apply the same standards you use to decide when you are trying to decide if someone's telling you the truth? Would you apply some general standards, and would you apply those same standards to a police officer the same as any other witness?

A I would probably err on the side of the police officer. He or she would receive the benefit of the doubt. As to a standard, if it's a gray area, I would, if there were error, I would err on the side of the police officer.

Q If you were trying to evaluate the credibility of that testimony -- and we look at things, like if someone is interested in the result of the case, or demeanor on the witness stand, or we look at how they testify and all of those factors -- would you apply those same factors to a police officer the same as any other witness?

A Yes.

Q If you found that that officer was not truthful, could you put aside and disregard that testimony?

A Yes, I could.

….

Q If you are selected as a juror, you will be taking an oath to try the case and make a decision based solely on the evidence presented in Court.

A That's correct; I understand.

The juror also stated that he would decide the case on the evidence and follow the court's instructions and could reach a verdict of not guilty if the evidence so indicated. The trial court then denied the defense request to strike the juror for cause, reasoning that his responses indicated that the juror would take his oath seriously and could be fair. This juror did actually hear the case and joined the rest of the jurors in finding Edwards guilty on all counts.

¶9 On June 6, 1996, Edwards was sentenced to two consecutive life terms in prison without parole plus 260 years. The postconviction proceedings in this case were prolonged and unusual and the details of such need not be recounted here as they are not pertinent to this appeal. Edwards filed a postconviction motion alleging: (1) lack of probable cause to arrest; (2) error in allowing all the counts to be joined in one trial; (3) error in failing to strike the juror for cause; and (4) ineffective assistance of counsel for failing to call any alibi witnesses. The trial court denied the motion on the first three issues and ordered a ***Machner***[3] hearing on the ineffective assistance of counsel issue. Edwards then changed attorneys, which caused another delay in the proceedings. The new counsel filed a supplemental motion for postconviction relief adding additional instances of ineffective assistance of trial counsel. The trial court denied this motion and ordered the scheduling of the ***Machner*** hearing on the alibi allegation. After the evidentiary hearing on the ineffective assistance of counsel claim, the trial court entered an order denying Edwards's motion that his trial counsel provided ineffective assistance for failing to call alibi witnesses.

¶10 Edwards now appeals.

[3] *See* ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

A. Probable Cause to Arrest.

¶11 Edwards's first claim is that the police did not have probable cause to arrest him and, as a result, the trial court should have suppressed the post-arrest eyewitness identifications and his confession. We reject Edwards's contention.

¶12 Probable cause to arrest exists when the facts known to an officer are sufficient to permit one to reasonably conclude the individual has committed or is committing a crime. ***State v. Kiekhefer***, 212 Wis. 2d 460, 484, 569 N.W.2d 316 (Ct. App. 1997). The circumstances need not make the accused's guilt more probable than not. ***State v. Koch***, 175 Wis. 2d 684, 701, 499 N.W.2d 152 (1993). However, guilt must be more than a mere possibility. ***State v. Riddle***, 192 Wis. 2d 470, 476, 531 N.W.2d 408 (Ct. App. 1995). Probable cause is an objective standard, dependent upon the facts as they existed at the time of the arrest. ***Id.*** Where, as here, the facts are undisputed, probable cause to arrest is a legal question which we review independently. ***State v. Wheaton***, 114 Wis. 2d 346, 349, 338 N.W.2d 322 (Ct. App. 1983), *overruled on other grounds by* ***State v. Pham***, 137 Wis. 2d 31, 403 N.W.2d 35 (1987). In determining whether probable cause exists, we must look to the totality of the circumstances to determine whether the arresting officer's knowledge at the time of the arrest would lead a reasonable police officer to believe that the defendant was committing a crime. *See* ***State v. Nordness***, 128 Wis. 2d 15, 35, 381 N.W.2d 300 (1986).

¶13 The trial court concluded that there was probable cause to arrest Edwards because:

> [T]here was information sufficient to lead a reasonable police officer to believe that guilt is more than a possibility. There was sufficient evidence to lead a reasonable officer to believe the defendant committed a crime. I think the significant factors are the short span of time, the close

> distance between the scene and the place of – scene of the crime and place of arrest, the trail of evidence between the scene of the crime and the place of arrest, the money, the dye packs, the footprints, and the hearing of the voices. So I'm satisfied that there was sufficient probable cause and that motion is denied.

We agree with the trial court's analysis. The police immediately responded to a bank robbery and found a trail of dye and footprints leading directly to the house Edwards was in. When the police approached the home, they heard male voices and a male voice exclaim, "[W]e really fucked up this time." When the officers knocked on the door, a woman told them she was home alone with her children, which was not the truth. When the police entered, they encountered Edwards, who fit the general physical description of the suspects that fled from the scene of the bank robbery. Based on the totality of the circumstances, we conclude that there was sufficient evidence for the police officers to reasonably conclude that Edwards had participated in the crime.

¶14 We are not persuaded by Edwards's suggestion that because the bank only reported *two* black male suspects, and the police had already arrested two black males outside the home, there was not probable cause to arrest more than two. The police followed the evidence and reasonably concluded that all four men at the end of the dye and footprints trail were probably involved in committing the bank robbery. Accordingly, we reject Edwards's claim that the trial court erred in finding probable cause existed to arrest him. Because there was sufficient probable cause to arrest Edwards, his claim that the eyewitness identification and confession should have been suppressed based on a faulty arrest

must also be denied. The arrest was legal, and therefore, the identification and confession need not be suppressed on that basis.[4]

B. Request for Attorney/Coerced Confession.

¶15 Edwards's next contention is that the trial court erred in denying his motion to suppress, which alleged that his request for an attorney was ignored, and that his confession was coerced. We reject his contentions. Our review of a motion to suppress decision is mixed. ***State v. Eason***, 2001 WI 98, ¶9, 245 Wis. 2d 206, 629 N.W.2d 625. We uphold the trial court's findings of fact unless they are clearly erroneous, but we review the constitutional issue independently. ***Id.***

¶16 Here, Edwards's first challenge relates to his claim that he requested an attorney, and that his request was simply ignored by the police. He also claims that all of his rights were read to him except his right to an attorney. The trial court, after considering all of the testimony at the suppression hearing, found that Edwards was specifically advised of his right to counsel and he did not invoke that right. The court found that Edwards did not request an attorney during the time he was being questioned by police after his arrest and voluntarily waived his rights:

> [T]he State has met its burden beyond a reasonable doubt on the facts as presented in this case, that the defendant when interrogated on both occasions was given the appropriate Miranda warnings, that he understood those warnings and made a knowing, intelligent waiver of his rights and agreed to speak and did, in fact, speak.

[4] Edwards argues that the footprints leading to the back of the house may have been made by Dortch and not someone inside the residence and that the exclamation heard by police could have an innocent explanation – such as someone burning breakfast. We are not persuaded by possible innocent explanations as it is well settled law that probable cause is not defeated by the existence of innocent inferences when there are equally reasonable inferences of wrongdoing. *See* ***State v. Waldner***, 206 Wis. 2d 51, 58-61, 556 N.W.2d 681 (1996).

¶17 The trial court based this specific finding on the testimony of the police that Edwards was read his ***Miranda*** rights, including his right to have an attorney and that Edwards did not ask for an attorney at any time during the interrogation. The trial court also noted that Edwards was cooperative, was not inexperienced based on past encounters with the police, was not intoxicated and was afforded an opportunity to write on the statements that were prepared.

¶18 Our review of the record demonstrates that the trial court's findings in this regard were not clearly erroneous. There is substantial credible evidence to support the trial court's finding that the officers' version of events was more believable than Edwards's version. Therefore, based on this finding, we cannot conclude that Edwards was denied his right to counsel.

¶19 With respect to the second part of this claim, Edwards argues that his confession was not voluntary because it was coerced. He claims he would not be allowed to go to bed unless he signed the statement, the police promised to release him if he confessed, that the charges would be dropped if he confessed, and that he felt pressured to confess because the officers were seated so close to him that he could not move without touching the officers. He also points to the length of the interrogation—ten hours over two days—to support his claim of coercion. The trial court found that Edwards's statements were voluntary and not the product of coercion. We agree.

¶20 When the State seeks to admit a defendant's custodial statement, constitutional due process requires that it make two discrete showings: (1) the defendant was informed of his ***Miranda*** rights, understood them, and knowingly and intelligently waived them; and (2) the defendant's statement was voluntary. ***State v. Lee***, 175 Wis. 2d 348, 359, 499 N.W.2d 250 (Ct. App. 1993). A

defendant's assertion that his statements were involuntary places on the State the threshold burden to prove by a preponderance of evidence that his statements were voluntary. ***Id.*** at 362. To meet this burden, the State must show that the defendant made the statements willingly and not as a result of duress, threats, or promises. ***Id.*** at 360. Once the State makes a *prima facie* case of voluntariness, the burden shifts to the defendant to present rebuttal evidence. ***Id.*** at 360-61. If a defendant fails to present evidence of coercion in rebuttal, further inquiry about balancing the actions of the police with the personality of the defendant is inappropriate. ***State v. Deets***, 187 Wis. 2d 630, 635-36, 523 N.W.2d 180 (Ct. App. 1994).

¶21 Here, the trial court concluded that there was no evidence of coercion. The interviews occurred in the regular interrogation rooms. Edwards was given bathroom breaks, and all of his requests for food, drink and cigarettes were granted. Edwards was not handcuffed, nor is there any suggestion that weapons were displayed or force of any kind was used. Edwards signed the statements prepared and wrote on each page that, "this is the true [sic]." Edwards was given the opportunity to correct the statements and did so by initialing errors in the statements. In addition, although the interrogation in total was relatively lengthy, it occurred over two days, with the first being on January 3, 1996, from 5:45 p.m. until 11:50 p.m., and the second being on January 4, 1996, commencing at about 10:00 a.m. and lasting for three hours. Edwards was allowed to sleep in between the two interviews.

¶22 The only indication that promises were made to Edwards was his assertion that he was promised to be released if he signed the statements. The trial court found this assertion to be incredible, especially because Edwards indicated that he did not expect to be released from custody, but simply released back to his cell.

¶23 Again, the trial court found that Edwards was read his ***Miranda*** rights, that he understood his rights, and that he knowingly, voluntarily and intelligently waived his rights. Based on the foregoing, we conclude that the trial court's findings with respect to this claim were not clearly erroneous. The police officers testified that Edwards was read all of his rights at the outset of each interview, that he was not made any promises, and that he voluntarily agreed to waive his rights and give a statement. The officers also testified that the interrogation rooms were such that Edwards was seated several feet away from the officers and had room to stand up and walk around had he wished to do so, and that Edwards was provided with food, water and bathroom breaks. The trial court found the officers' testimony to be more credible than the testimony of Edwards.

¶24 Because the trial court's findings are not clearly erroneous, we agree with its assessment that there is insufficient evidence to suggest that Edwards's statements were coerced by the police. Rather, the totality of the evidence supports the trial court's conclusion that Edwards's statements were knowingly, intelligently and voluntarily provided. Accordingly, the trial court did not err in denying his motion to suppress.

C. Motion to Sever.

¶25 Edwards next asserts that the trial court erroneously exercised its discretion in denying his motion to sever the charges. Edwards claims he was prejudiced by the trial court's failure to sever the homicides from the robberies and some of the robberies from others. We cannot agree.

¶26 Review of a challenged joinder is a two-step process on appeal. ***State v. Locke***, 177 Wis. 2d 590, 596, 502 N.W.2d 891 (Ct. App. 1993). First, we independently examine the propriety of the initial determination of joinder as a

matter of law. ***Id.*** "The joinder statute is to be construed broadly in favor of initial joinder." ***State v. Hoffman***, 106 Wis. 2d 185, 208, 316 N.W.2d 143 (Ct. App. 1982). Joinder may be obtained when two or more crimes "are of the same or similar character or are based on the same act or transaction ...." WIS. STAT. § 971.12(1). To be of the "same or similar character," "crimes must be the same type of offense occurring over a relatively short period of time and the evidence as to each must overlap." ***State v. Hamm***, 146 Wis. 2d 130, 138, 430 N.W.2d 584 (Ct. App. 1988). Second, whether joinder is improper due to prejudice to Edwards is a factual question within the trial court's discretion. *See* ***State v. Nelson***, 146 Wis. 2d 442, 455, 432 N.W.2d 115 (Ct. App. 1988).

¶27 Here, Edwards argued to the trial court that the crimes were separate incidents and not part of a common scheme or plan. He contended that each bank robbery was planned separately and that the motive for the video store robbery was to obtain a gun, not money, while the motive for the bank robberies was to obtain money. The State contended that the series of robberies were a part of a common plan or scheme because they all occurred over a three-week period of time and that the common motive was to share the financial rewards of the crimes. The State argued that the crimes involved the same group of people, the same witnesses and the same evidence would be admitted if the crimes were tried separately. The trial court agreed with the State.

¶28 Based on our review, we conclude that the facts support joinder of the crimes for the same reasons proffered by the State. We also conclude that Edwards failed to demonstrate that he suffered any unfair prejudice as a result of the joinder. He simply makes general statements that the jury convicted him of some of the crimes simply because it believed he acted in conformity with conduct that was proven in other counts. These general assertions of prejudice are

insufficient to outweigh the interests of the public in conducting a single trial on the nine counts. *See* ***State v. Bellows***, 218 Wis. 2d 614, 623-25, 582 N.W.2d 53 (Ct. App. 1998). Based on the foregoing, we conclude that the trial court did not erroneously exercise its discretion in denying the motion to sever.

D. Juror Not Struck for Cause.

¶29 Edwards claims that he was denied a fair trial when the trial court refused to strike a juror for cause. Edwards argues that Juror Gerald Sobocinski was biased based on his answers to questions during *voir dire*, wherein Sobocinski indicated that his brother was a police officer and that Sobocinski would be more likely to believe the testimony of the police. The trial court concluded after individual *voir dire* with Sobocinski that despite his initial opinion favoring police witnesses, Sobocinski indicated that he would base any decision on the evidence and follow the instructions from the court. Accordingly, the trial court ruled that Sobocinski need not be struck for cause. Neither side exercised a peremptory strike to remove Sobocinski who, as a result, ended up serving on the jury and finding Edwards guilty on all counts. Based on our review, we conclude that the trial court did not err in denying Edwards's motion to strike Sobocinski for cause.

¶30 A prospective juror must be excused for cause if, among other reasons, the juror "has expressed or formed any opinion, or is aware of any bias or prejudice in the case." WIS. STAT. § 805.08(1). "Prospective jurors are presumed impartial, and the [party challenging] that presumption bears the burden of proving bias." ***State v. Louis***, 156 Wis. 2d 470, 478, 457 N.W.2d 484 (1990).

¶31 A trial court's discretionary determination that a prospective juror can be impartial "should be overturned only where the prospective juror's bias is 'manifest.'" ***State v. Ferron***, 219 Wis. 2d 481, 496-97, 579 N.W.2d 654 (1998),

overruled on other grounds by ***State v. Lindell***, 2001 WI 108, 245 Wis. 2d 689, 629 N.W.2d 223. This discretionary standard is appropriate because the trial court judge is in a better position than an appellate court to assess a prospective juror's bias. ***State v. Faucher***, 227 Wis. 2d 700, 720-21, 596 N.W.2d 770 (1999). A prospective juror should be removed as biased "whenever a review of the record: (1) does not support a finding that the prospective juror is a reasonable person who is sincerely willing to put aside an opinion or prior knowledge; or (2) does not support a finding that a reasonable person in the juror's position could set aside the opinion or prior knowledge." ***Id.*** at 724-25. The first prong focuses on the prospective juror's subjective willingness to set aside bias and "accounts for the [trial] court's superior position to assess the demeanor and disposition of prospective jurors." ***Id.*** The second prong allows the appellate courts to determine whether under the particular circumstances surrounding the *voir dire* examination, no reasonable juror could put aside the bias or opinion which is revealed by the record. ***Id.*** Neither subjective nor objective bias was demonstrated in the instant case.

¶32 When reviewing a trial court's action, we may assume facts to support the decision and any conflicts or conflicting inferences will be resolved in favor of the trial court's ultimate conclusion. ***State v. Angiolo***, 186 Wis. 2d 488, 495-96, 520 N.W.2d 923 (Ct. App. 1994).

¶33 Based on the facts in this record, we cannot say that this juror was biased. The individual *voir dire* with this juror after he initially expressed a favorable opinion of police testimony indicated that he would put aside that opinion and base his decision on the evidence and the law. The juror exhibited sincerity in abiding by the juror's oath and holding the State to its burden of proof. We conclude, based on this record, that this juror was neither subjectively nor

objectively biased. He affirmatively stated that he could be impartial and a reasonable person in his position should be able to put the views expressed by Sobocinski aside and decide the case fairly. ***Faucher***, 227 Wis. 2d at 718-19.

E. Ineffective Assistance/Alibi.

¶34 Edwards's last argument is that his trial counsel provided ineffective assistance by failing to present an alibi defense. We are not convinced.

¶35 In order to establish that he or she did not receive effective assistance of counsel, the defendant must prove two things: (1) that his or her lawyer's performance was deficient; and (2) that "the deficient performance prejudiced the defense." ***Strickland v. Washington***, 466 U.S. 668, 687 (1984); ***State v. Sanchez***, 201 Wis. 2d 219, 236, 548 N.W.2d 69 (1996). A lawyer's performance is not deficient unless he or she "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." ***Strickland***, 466 U.S. at 687. Even if a defendant can show that his or her counsel's performance was deficient, he or she is not entitled to relief unless he or she can also prove prejudice; that is, he or she must demonstrate that his or her counsel's errors "were so serious as to deprive [him or her] of a fair trial, a trial whose result is reliable." ***Id.*** Stated another way, to satisfy the prejudice-prong, "'[a] defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.'" ***Sanchez***, 201 Wis. 2d at 236 (citation omitted).

¶36 In assessing the defendant's claim, we need not address both the deficient performance and prejudice components if he or she cannot make a sufficient showing on one. *See* ***Strickland***, 466 U.S. at 697. The issues of

performance and prejudice present mixed questions of fact and law. *See* ***Sanchez***, 201 Wis. 2d at 236. Findings of historical fact will not be upset unless they are clearly erroneous, *see* ***id.***, and the questions of whether counsel's performance was deficient or prejudicial are legal issues we review independently. *See* ***id.*** at 236-37.

¶37 A defendant who claims that his or her trial counsel was deficient for failing to locate and present testimony from a witness or witnesses must allege with specificity the particular witness counsel should have located and what the witness would have said if called to testify. *See* ***State v. Flynn***, 190 Wis. 2d 31, 48, 527 N.W.2d 343 (Ct. App. 1994). He must show both that the witness would have testified and that the witness's testimony would have been favorable. *See* ***Alexander v. McCotter***, 775 F.2d 595, 602 (5th Cir. 1985).

¶38 The trial court held a hearing on Edwards's claim and his former trial counsel testified that he did not recall discussing an alibi defense with Edwards. Edwards asserted otherwise, testifying that he told his trial attorney about alibis for each offense and told him that another specific person committed the crimes. Edwards also presented the testimony of his friend, Jodie Heipel, and his mother, Sonja Gibson. However, neither individual could testify with specificity as to the whereabouts of Edwards on the dates of the crimes.

¶39 Moreover, Edwards's former trial counsel testified that he hired a private investigator, and challenged the State's case against Edwards with motions regarding the arrest and line-up evidence, and with cross-examination of the State's witnesses.

¶40 At the conclusion of the hearing, the trial court found that Edwards had not discussed with his attorney the possibility of asserting an alibi defense. It

found that the record supported Edwards's former trial counsel's account as there was no mention of an alibi anywhere throughout the pretrial proceedings, the trial itself, or the initial postconviction proceedings. The trial court found Edwards's testimony to be incredible. The record supports the trial court's determinations. If an alibi had been discussed as a viable defense, it would have appeared somewhere during the proceedings. Accordingly, the trial court's findings are not clearly erroneous and, based on such, we cannot conclude that former trial counsel provided ineffective assistance.

¶41 In sum, we reject each of Edwards's contentions of error and affirm the judgment and orders.

By the Court.—Judgment and orders affirmed.

Not recommended for publication in the official reports.