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June 22, 2021

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You are hereby notified that the Court has entered the following opinion and order:

2019AP2220 State of Wisconsin v. Antoine D. Edwards (L.C. # 2002CF4580)

Before Brash, P.J., Dugan and White, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Antoine D. Edwards appeals a postconviction order denying his motion for a new trial. Edwards claims that he has newly discovered evidence, namely, a recantation by an eyewitness who testified at Edwards's homicide trial. The circuit court concluded that Edwards failed to corroborate the recantation. Upon review of the briefs and record, we conclude at conference

that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).[1] We summarily affirm.

In February 2003, a jury found Edwards guilty, as a party to a crime, of first-degree reckless homicide by use of a dangerous weapon. The nature of Edwards's current claim requires an overview of the evidence presented at trial and of his subsequent postconviction litigation.

Quade Workman (Workman), ten years old at the time of trial, testified that on August 9, 2002, he was standing on the porch of his home when he saw Edwards chase and shoot at a man—subsequently identified as Charles Jones—who was carrying grocery bags. Workman also saw Edwards's brother, John Edwards,[2] sitting in a Chevrolet and shooting at Jones. After the shooting, Workman saw Edwards get into the Chevrolet with John and drive away.

Workman's mother, Lucretia Workman, testified that she was walking to a store on the morning of August 9, 2002, when she saw Edwards standing next to a Chevrolet talking to the driver, John. She next saw Edwards walking away from the car at the same time that she saw Jones walking with grocery bags. She testified that she saw John begin driving in the same direction as Jones, and then she heard seven or eight gun shots and saw Jones run down an alley before he fell to the ground.

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[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

[2] For ease of reading and to avoid confusion, we refer to John Edwards as John in the remainder of this opinion.

A detective testified that he interviewed Edwards's girlfriend, Tiffany Taylor, who said that Edwards left her home with his brother John on the morning of August 9, 2002. The brothers returned at approximately 11:00 a.m., changed their clothes, and then John hid two handguns in her attic. A police officer testified that he found a .25 caliber pistol and a .38 caliber revolver in Taylor's attic. Additional testimony established that Jones was killed by a .25 caliber bullet and that a .38 caliber bullet was found at the scene of the shooting.

In his defense, Edwards presented testimony from two detectives who described their interviews with Mildred Willis. She told the detectives that she saw John shoot the victim from the driver's side window of the car he was driving, that she did not see Edwards shoot the victim, and that she did not see Edwards present at the scene of the shooting.

The jury found Edwards guilty as charged. A few months later, John pled guilty to second-degree reckless homicide while armed in connection with Jones's death.

Edwards's first postconviction motion, filed in December 2003 with the assistance of counsel, sought a new trial based on alleged newly discovered evidence. In support, he offered an affidavit from John averring that he alone shot Jones and used two guns to commit the crime. The circuit court denied the claim in a 2004 decision and order, concluding that the evidence was arguably newly available but was not newly discovered and further concluding that the testimony was not likely to have made a difference if Edwards had presented it to the jury. Edwards then discharged his postconviction counsel and filed a second postconviction motion *pro se*, alleging, among other matters, that his trial counsel was ineffective for failing to call John as a witness.

The circuit court denied his claims, he appealed, and we affirmed. *See* ***State v. Edwards***, No. 2004AP3292-CR, unpublished slip op. (WI App Mar. 14, 2006).[3]

Edwards went on to file several additional *pro se* postconviction motions, including a 2010 motion in which he again alleged both ineffective assistance of trial counsel and newly discovered evidence. As grounds for these allegations, he claimed that his trial counsel failed to present two eyewitnesses on his behalf. In supporting affidavits, each witness averred that he approached Edwards while the men were imprisoned together, and each witness revealed that he saw the August 9, 2002 shooting. According to their affidavits, each witness was prepared to testify that he saw John driving Edwards's car and then saw John shoot at Jones from the car. The circuit court denied relief, concluding that the evidence each witness could offer was similar to Willis's description of the incident and therefore was merely cumulative. The circuit court further determined that, even if Edwards had presented testimony from the two witnesses, "it would not have refuted Quade Workman's testimony that the defendant was present and shooting a gun at the victim." We affirmed. *See* ***State v. Edwards***, No. 2010AP2481, unpublished slip op. (WI App June 19, 2012).[4]

Edwards next filed the postconviction motion underlying this appeal. Assisted by new counsel, he claimed that he had newly discovered evidence, specifically, an affidavit signed by Workman in December 2017. In the affidavit, Workman averred that he did not see Edwards shoot anyone or fire a gun, and Workman further averred that he saw only John shoot the victim.

[3] The Honorable John A. Franke entered both of the postconviction orders that we reviewed in our 2006 opinion.

[4] The Honorable Jean A. DiMotto entered the postconviction order that we reviewed in our 2012 opinion.

Finally, Workman averred that he testified falsely at trial because his mother and the police pressured him to say that he saw Edwards fire a gun.

In addition to Workman's affidavit, Edwards submitted an affidavit from Terell Douglas. Douglas alleged that in 2017, while imprisoned in Fox Lake Correctional Institution, he encountered Workman, who "apparently believed that he had previously implicated [Douglas] in a shooting." According to Douglas, when he and Workman spoke, Douglas realized that Workman "was confusing [Douglas] with a childhood friend of [Douglas's] whose name is Antoine Edwards." Douglas therefore contacted Edwards at another prison and told him that "Workman was looking for [Edwards]."

Edwards himself signed an affidavit in which he denied involvement in the August 9, 2002 shooting and posited that Lucretia Workman was motivated to concoct evidence against him because he "routinely had words" with her. Finally, Edwards supported his motion for a new trial with a copy of the affidavit that John signed in December 2003, alleging that he alone shot Jones. The circuit court denied relief without a hearing, concluding that Workman's recantation was not corroborated as required by law, and that even if deemed corroborated, the recantation did not warrant relief. Edwards appeals.

A defendant seeking a new trial based on newly discovered evidence must satisfy a five-factor test. Initially, the defendant must prove, by clear and convincing evidence, that: "(1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative." ***State v. Armstrong***, 2005 WI 119, ¶161, 283 Wis. 2d 639, 700 N.W.2d 98 (citation omitted). If the defendant satisfies these four requirements, "the circuit court must determine

whether a reasonable probability exists that a different result would be reached in a [new] trial." ***Id.*** (citation omitted). "A reasonable probability of a different outcome exists if 'there is a reasonable probability that a jury, looking at both the old evidence and the new evidence, would have a reasonable doubt as to the defendant's guilt.'" ***State v. Love***, 2005 WI 116, ¶44, 284 Wis. 2d 111, 700 N.W.2d 62 (citation and brackets omitted).

Edwards's alleged newly discovered evidence is a recantation. "Recantations are inherently unreliable." ***State v. McCallum***, 208 Wis. 2d 463, 476, 561 N.W.2d 707 (1997). Therefore, to earn a new trial, Edwards must satisfy a requirement in addition to the five-factor test. Specifically, "recantation testimony must be corroborated by other newly discovered evidence." ***Id.*** Our supreme court has established that the corroboration requirement has two distinct components: "Corroboration requires newly discovered evidence of both: (1) a feasible motive for the initial false statement; and (2) circumstantial guarantees of the trustworthiness of the recantation." ***State v. McAlister***, 2018 WI 34, ¶58, 380 Wis. 2d 684, 911 N.W.2d 77. Indicia of untrustworthiness include a long passage of time between the trial and the recantation, incarceration of the person recanting, and discrepancies between the recantation and other facts of record. *See* ***id.***, ¶¶60-61.

Edwards contends that the circuit court erred by denying him a postconviction hearing to explore his claim of newly discovered evidence. We resolve that contention under the standard set forth in ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. We consider *de novo* whether a postconviction "motion on its face alleges sufficient material facts that, if true, would entitle the defendant to relief.... If the motion raises such facts, the circuit court must hold an evidentiary hearing." ***Id.*** If, however, "the motion does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively

demonstrates that the defendant is not entitled to relief, the circuit court has the discretion to grant or deny a hearing." ***Id.*** We review with deference the circuit court's discretionary decision to deny a hearing. *See* ***id.***

A circuit court soundly exercises its discretion by denying postconviction relief without a hearing when a defendant claims to have newly discovered recantation evidence but fails to corroborate it. *See* ***McAlister***, 380 Wis. 2d 684, ¶63. Accordingly, we begin our examination of Edwards's claim by considering whether Edwards satisfied the corroboration requirement.

Edwards argued in the circuit court that Workman's recantation "is corroborated by Willis'[s] statements, as testified to by [two detectives]" at trial. Corroborating evidence, however, must itself be newly discovered. *See* ***McAlister***, 380 Wis. 2d 684, ¶58. Evidence that was known to the defendant before conviction is necessarily not "newly discovered." *See* ***Armstrong***, 283 Wis. 2d 639, ¶161. Because Edwards knew of Willis's statements before his conviction and presented them at trial, they are not newly discovered and do not satisfy the corroboration requirement.

Edwards next argued in the circuit court that "[Workman's] affidavit is further corroborated by an affidavit previously provided by John [] in which he swore to having committed the shooting by himself, and further swore that [] Edwards was not involved or present at the scene at the time [John] shot the victim." This evidence also fails to satisfy the corroboration requirement. When Edwards first offered John's affidavit as newly discovered evidence in 2003, the circuit court rejected the claim, finding that Edwards failed to show "that the evidence was not discovered until after the trial," failed to show "that he was not negligent in failing to discover" the evidence, and failed to show "that the additional evidence might make a

difference." *Cf.* ***Armstrong***, 283 Wis. 2d 639, ¶161. The circuit court also found that John's affidavit was "implausible and circumstantially suspicious," in part because it was not offered until after John was sentenced for his role in Jones's homicide and had received a sentence much shorter than Edwards's. Edwards cannot relitigate his unsuccessful claim that John's affidavit constitutes newly discovered evidence by rephrasing that claim as an allegation that the affidavit is newly discovered corroboration of a different affidavit. *See* ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (stating that "[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue").

For the sake of completeness, we also observe that, were we now to consider Edwards's contention that John's affidavit constitutes newly discovered corroborating evidence, we would reject that contention. As the circuit court emphasized in denying Edwards's current claim, John's affidavit is contradicted by the statements that John made in connection with his own sentencing proceedings, where he incriminated Edwards. Specifically, the circuit court found that John told a presentence investigator that when he shot at the victim, "Antoine was shooting at the victim still too." John subsequently confirmed in open court that Edwards "started to shoot [the victim] over drug money and drug turf." Accordingly, we agree with the circuit court that John's affidavit is itself a recantation of John's sentencing statements implicating Edwards,

and the failure to account for those earlier statements in the later recantation indicate the recantation's untrustworthiness.[5] *See* ***McAlister***, 380 Wis. 2d 684, ¶61.

Edwards next states that Douglas's affidavit constitutes newly discovered corroboration of Workman's recantation. According to Edwards, Douglas's averments guarantee the trustworthiness of Workman's recantation because they show that Workman encountered Douglas in prison while looking for Edwards, Workman "thought that Douglas was [Edwards]," and "[b]y pure coincidence, Douglas knew who [Edwards] was." Further, Edwards says that Workman's fortuitous encounter with Douglas and Workman's subsequent contact with Edwards occurred "well after [Edwards's] trial, conviction, sentence, and direct appeal through no fault of" Edwards. Our review of the circuit court proceedings reveals that Edwards did not argue there that Douglas's affidavit corroborates Workman's recantation. We normally do not consider arguments made for the first time on appeal. *See* ***Townsend v. Massey***, 2011 WI App 160, ¶23, 338 Wis. 2d 114, 808 N.W.2d 155. We elect to depart from our normal practice to remind Edwards that the passage of time undermines rather than supports trustworthiness, and that "recantations made while in jail are 'highly suspicious.'" *See* ***McAlister***, 380 Wis. 2d 684, ¶¶60-61 (citation omitted). Moreover, Edwards fails to offer an explanation, let alone a

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[5] The circuit court's 2004 order denying Edwards's first postconviction motion also discussed John's sentencing statements. In that order, the circuit court cited the sentencing transcript in John's case and explained that "John's position [was] that [Edwards] started the shooting because of some drug dealing dispute and that John acted to back up his brother[.]" Neither the transcript of John's sentencing nor the presentence investigation report filed in John's case is part of the appellate record in the instant matter. As the State points out, however, Edwards did not move the circuit court to reconsider its description of the statements that John made in connection with his own sentencing, nor has Edwards otherwise contended that those descriptions are incorrect. Because Edwards has not challenged the circuit court's description of John's sentencing statements inculpating Edwards, we conclude that he concedes the accuracy of those statements. *See* ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994).

guarantee of trustworthiness, for the "pure coincidence" that Workman not only approached Edwards's childhood friend but also confused that friend with Edwards.

Finally, Edwards contends that Workman's affidavit is corroborated because Workman repeated statements against his penal interest when he talked to Douglas, and "repetition of [a] self-inculpatory statement to another witness ... can be sufficiently self-corroborating." In support, Edwards cites ***State v. Anderson***, 141 Wis. 2d 653, 416 N.W.2d 276 (1987), and ***State v. Guerard***, 2004 WI 85, 273 Wis. 2d 250, 682 N.W.2d 12. Those cases, however, do not involve recantations. Rather, they involve construction of WIS. STAT. § 908.045, which bars admission of certain hearsay statements against penal interest unless those statements are corroborated. *See* ***Anderson***, 141 Wis. 2d at 658; ***Guerard***, 273 Wis. 2d 250, ¶5. The instant case does not involve construction of § 908.045; accordingly, ***Anderson*** and ***Guerard*** do not apply. Indeed, ***McAlister*** makes clear that a recantation cannot be self-corroborating: "Newly discovered recantation evidence must be corroborated by *other* newly discovered evidence."[6] ***Id.***, 380 Wis. 2d 684, ¶57 (citation and brackets omitted, emphasis added).

In sum, Edwards fails to corroborate Workman's recantation with other newly discovered circumstantial guarantees of the trustworthiness of that recantation. *See* ***id.***, ¶¶57-58.

[6] We add that neither Workman's affidavit nor Douglas's affidavit show that Workman made statements to Douglas that were against Workman's penal interest. Workman's affidavit does not mention Douglas at all. As to Douglas's affidavit, we have carefully reviewed that one-page document. According to the affidavit, Douglas learned "that someone was looking for [him] and that [the person] apparently believed that he had previously implicated [Douglas] in a shooting." Douglas alleged that he then spoke to Workman and "as [they] began to talk about the matter [Douglas] discovered that [Workman] was confusing [Douglas] with ... Edwards." These averments simply do not support Edwards's contention that "Douglas's affidavit unequivocally indicates that Quade Workman was looking for Antoine Edwards to confess that he provided perjured testimony at trial and false statements to the police." To the contrary, Douglas's affidavit plainly does *not* state that Workman confessed either perjury or false statements when he spoke to Douglas.

Accordingly, the circuit court properly exercised its discretion by denying Edwards's postconviction motion without a hearing. *See* ***id.***, ¶63. For all the foregoing reasons, we affirm.

IT IS ORDERED that the postconviction order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals