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DISTRICT I

July 11, 2023

To:

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Circuit Court Judge
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Michael S. Holzman
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You are hereby notified that the Court has entered the following opinion and order:

2022AP1875-CR

State of Wisconsin v. Vonn T. Yorke (L.C. # 2018CF4692)

Before Donald, 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).

Vonn T. Yorke appeals a judgment of conviction entered after a jury convicted him of human trafficking and receiving compensation for human trafficking. He also appeals from the order denying his motion for postconviction relief on the basis of newly discovered evidence. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ The judgment and order are summarily affirmed.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

This matter comes before us for a second time. Yorke previously appealed a judgment convicting him of human trafficking and receiving compensation for human trafficking. He argued that he was entitled to a new trial based on newly discovered evidence; that the trial court improperly admitted evidence; and that the trial court erroneously denied his motion to require the State to clarify the dates of the charged conduct. *See State v. Yorke*, No. 2021AP900, unpublished slip op. (WI App March 1, 2022). We remanded the matter for a hearing on Yorke’s newly discovered evidence argument. Following an evidentiary hearing, the trial court denied Yorke’s motion for a new trial.

We discussed the factual and procedural background of this case in our previous decision:

The charges against Yorke involve M.H., who told police that Yorke had recruited her to engage in prostitution over the time frame of January 1, 2016 through June 15, 2018. According to the criminal complaint, M.H. said that she met Yorke in 2015; they began dating and were living together in Milwaukee....

However, after about a year, M.H. said this arrangement “changed.”.... Yorke would not let her stop conducting the prostitution dates. She stated that she had monetary quotas that Yorke set for her, and if she did not meet those quotas he beat her, which included punching her, throwing her to the ground, and kicking her. Yorke also threatened M.H. with a gun multiple times, and engaged in anal sex with M.H. as a “punishment.” M.H. finally fled from Yorke in mid-June 2018 after he had beaten her “yet again,” punching and choking her. M.H. estimated that she had received approximately \$300,000 from prostitution, all of which she had given to Yorke.

....

Yorke’s first trial ended in a mistrial. That trial included testimony from Adam Comer as a witness for the defense. Comer was a personal trainer who had met M.H. in 2018 at a fitness club, and they dated during that summer. Comer testified that M.H. told him she was living with her ex-boyfriend, Veto. Comer stated that after he and M.H. broke up, he contacted ... Yorke ... who told

Comer that he was M.H.'s boyfriend, and that Comer was just a "side piece."

During the second trial, Comer was not available to testify, but his testimony from the first trial was read into the record. Additionally, M.H. testified with regard to her relationship with Comer. In particular, she stated that Comer knew Yorke was her pimp, and that she was trying to leave Yorke; that she knew Comer had feelings for her, but that she did not feel the same way about him; and that Comer "snitched" about her relationship with Comer to a mutual friend of his and Yorke's.

After the jury convicted him in the second trial, Yorke filed a motion to vacate the verdicts on the grounds that he had obtained newly discovered evidence demonstrating that he had not trafficked M.H. Yorke asserted that a private investigator hired by the defense had obtained new information from Comer that "contradict[ed] the majority of [M.H.'s] trial testimony and ultimately her credibility." Yorke obtained an affidavit from Comer which included statements that M.H. tried to recruit Comer to be her new pimp, that she solicited Comer to rob Yorke at gunpoint, and that she told Comer she had "literally manufactured lies" about her previous pimp in order to send him to prison "so that she would never have to deal with him again." Comer stated that M.H. never told him she was being trafficked by Yorke or that she needed to be "helped or rescued from that situation." In fact, Comer characterized M.H. as being manipulative, and that she could be "very aggressive and even violent."

See *id.*, ¶¶ 3-11 (footnotes omitted).

The trial court denied Yorke's motion without a hearing and we remanded the matter. At the hearing, defense counsel's investigator, Tiffany Hofer, explained that she was not involved in the case until the presentence investigation stage (Yorke had a different investigator prior to trial). She spoke with Comer, who provided her with information that was not part of his trial testimony. Comer told Hofer that M.H. allegedly told him (Comer) that Yorke was just a "regular guy" and was a "trick," or client, rather than a pimp. Comer also told Hofer that he had shared this information prior to trial because no one asked him.

Comer also testified, telling the trial court, as relevant, that: (1) M.H. never indicated that Yorke was sexually trafficking her; (2) she referred to Yorke as a "trick"; (3) M.H. never

indicated that she was afraid of Yorke or that Yorke restricted her movements; (4) M.H. said that she voluntarily tattooed Yorke's face on her body; (5) M.H. always carried a weapon; (6) M.H. asked Comer to help her rob Yorke; and (7) M.H. indicated that she "milked [Yorke] for all that she thought she could get from him." Comer also claimed that he did not share this information with the pretrial defense investigator simply because he was not asked. He claimed the pretrial investigator was "flirting" with him rather than actually asking questions.

The trial court denied Yorke's motion. This appeal follows.

"The decision to grant or deny a motion for a new trial based on newly[]discovered evidence is committed to the [trial] court's discretion." *State v. Plude*, 2008 WI 58, ¶31, 310 Wis. 2d 28, 750 N.W.2d 42. "A [trial] court erroneously exercises its discretion when it applies an incorrect legal standard to newly[]discovered evidence." *Id.*

The determination of whether a new trial is warranted based on newly discovered evidence is a two-step process. *State v. Watkins*, 2021 WI App 37, ¶42, 398 Wis. 2d 558, 961 N.W.2d 884. First, 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 the evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative." *Plude*, 310 Wis. 2d 28, ¶32 (citation omitted).

If the defendant proves these four criteria, the trial court must then determine "whether a reasonable probability exists that had the jury heard the newly[]discovered evidence, it would have had a reasonable doubt as to the defendant's guilt." *Id.* This determination is a question of law that we review *de novo*. See *Watkins*, 398 Wis. 2d 558, ¶44. Furthermore, "[i]f the newly

discovered evidence fails to satisfy any one of these five requirements, it is not sufficient to warrant a new trial.” *State v. Eckert*, 203 Wis. 2d 497, 516, 553 N.W.2d 539 (Ct. App. 1996).

We conclude that Yorke has not met his burden of showing that he was not negligent in seeking the evidence. By Comer’s own admission the evidence was readily available before Yorke’s trial—Yorke simply did not obtain it. Comer stated that all of his post-trial statements were known to him prior to trial, he was simply not asked any detailed questions relevant to impeach M.H. Indeed, Comer was *Yorke’s* witness—Yorke had access to Comer prior to trial and easily could have obtained the statements he now contends are newly discovered. We agree with the trial court that Comer’s post-trial statements do not constitute newly discovered evidence. Consequently, we need not address Yorke’s contention that the evidence was not cumulative, or that the evidence could have altered the results of his trial. *See Turner v. Taylor*, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (court of appeals need not address all issues raised by the parties if one is dispositive).

For the foregoing reasons, we affirm the trial court.

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals