

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0291**

George Cornelius Watkins, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 27, 2022
Affirmed
Bryan, Judge**

Hennepin County District Court
File No. 27-CR-14-6338

Amber S. Johnson, Johnson Criminal Defense, Minneapolis, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Annika Johnson (certified student attorney), Minneapolis, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Slieter, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this appeal from an order denying appellant's second petition for postconviction relief, appellant argues that a trial witness gave false testimony, requiring a new trial.

Because the district court did not abuse its discretion in concluding that appellant failed to establish that the witness gave false testimony, we affirm.

FACTS

On March 7, 2014, respondent State of Minnesota charged appellant George Cornelius Watkins with one count of felony assault, alleging that Watkins physically forced B.T. into a vehicle. The complaint further alleges that once in the car, Watkins punched B.T. repeatedly. After Watkins drove B.T. to her home and carried her into the residence, Watkins assaulted her further, punching and choking her. According to the complaint, Watkins confiscated B.T.'s phone and she was not able to contact the police or anyone for help until after Watkins fell asleep. On June 12, 2014, the state amended the complaint, adding two counts of felony kidnapping. The case proceeded to trial.

At trial, B.T. testified that for several years, she had an “on and off” relationship with Watkins and that he physically abused her during this time. B.T. testified that she made plans to meet Watkins at a Minneapolis bar on March 6, 2014, but when he “started to get aggressive and angry,” she decided to go to the bar with two friends instead. When they arrived, B.T. saw Watkins, and she immediately wanted to leave. B.T. testified that Watkins was waiting in a truck with three people she did not know and that Watkins “forced [her] in the car with him.” She testified that he “pushed” her into the vehicle and that, although she was terrified, she did not resist him because she “knew not to” and because she feared how Watkins might react if she tried to resist. According to B.T.'s testimony, after she entered the vehicle, Watkins punched her and took her phone from her. Watkins then took off driving while continuing to punch her. Eventually, he pulled over and

continued punching her. B.T. testified that Watkins brought B.T. to her home and he “continued to fight more” inside the residence. The next morning, B.T. found her cellphone and called her cousin to ask her to call the police. Shortly after, the police arrived at B.T.’s home and arrested Watkins.

The jury found Watkins guilty of one count of felony assault and one count of felony kidnapping, but it acquitted him of the second count of felony kidnapping. The jury also found that the kidnapping occurred in B.T.’s zone of privacy—a factor that was used to support an upward sentencing departure. The district court sentenced Watkins to 39 months in prison for the assault conviction and 205 months in prison for the kidnapping conviction. Watkins appealed, challenging the admission of relationship evidence and the upward departure. *State v. Watkins*, No. A14-1779, 2015 WL 6829697 *1 (Minn. App. Nov. 9, 2015), *rev. denied* (Minn. Jan. 27, 2016). We affirmed. *Id.* In 2018, Watkins filed his first petition for postconviction relief, asserting numerous errors. The district court denied the petition and we affirmed the district court’s decision in an order opinion. *Watkins v. State*, No. A19-0152 (Minn. App. Sept. 9, 2019), *rev. dismissed* (Minn. Nov. 7, 2019).

In September 2020, Watkins filed his second postconviction petition, alleging that he had newly discovered evidence that B.T. recanted her trial testimony. Attached to the petition was an affidavit from a private investigator stating that the private investigator interviewed B.T. in his office on August 13, 2019, where B.T. told the investigator that she left the bar and got into Watkins’s vehicle “of her own free will.” B.T. also told the investigator that she made up the story about being forced into the vehicle because she

wanted Watkins to get into more trouble. After the interview, the investigator drafted the affidavit summarizing the interview, showed the document to B.T., and signed the affidavit. B.T. did not write the statement or sign the investigator's affidavit.

The district court presided over an evidentiary hearing. The private investigator testified at the hearing regarding the interview and his affidavit. The investigator explained that he did not have B.T. write or sign a statement herself, but instead allowed B.T. to review his draft affidavit. The private investigator testified that B.T. did not appear to be under duress during the interview but just seemed "tired of all this." B.T. also testified during the evidentiary hearing. She confirmed that she had met with the private investigator. She stated that it had been Watkins's idea to give the statement and that she gave the statement to the investigator because she felt "forced, scared, [and] wanted to be left alone." B.T. proceeded to explain that her statement to the investigator was not the truth and that she was lying to the investigator because she wanted Watkins to leave her alone. Specifically, B.T. testified that she was not telling the truth when she told the investigator that the trial testimony had been false. B.T. then reiterated her trial testimony:

B.T.: I was truthful about Mr. Watkins kidnapping me because if I didn't go, he was going to come in that bar and beat the hell out of me and take me out of there and make me (unintelligible). So, the best thing for me to do was to do whatever he says.

COUNSEL: Are you saying that you got in the car of your own free will because you thought that's what you needed to do?

B.T.: I was forced in the car. And—I was forced in the car, but I also knew if I didn't get in the car, I would have to deal with the consequences of what George does to me all the time.

B.T. also explained that her recollection of the incident was better at the time of the trial than at the evidentiary hearing and stated that her testimony at both the evidentiary hearing and the trial was true:

COUNSEL: Was your testimony at the trial in this case truthful?

B.T.: Today?

COUNSEL: Sorry. The original trial in 2014?

B.T.: Yes.

COUNSEL: And has your testimony today . . . been truthful?

B.T.: Yes.

Following the hearing, the district court denied Watkins's petition. The district court determined that Watkins could not prove that B.T.'s trial testimony was false and could not show that the jury would have reached a different conclusion in the absence of any false trial testimony. Watkins appeals.

DECISION

Watkins argues that B.T.'s recantation of her trial testimony requires a new trial. Because the district court did not abuse its discretion in concluding that Watkins failed to show that the witness's testimony was false, we discern no abuse of discretion.

A person convicted of a crime may seek relief by filing a postconviction petition with the district court to grant a new trial. Minn. Stat. § 590.01, subd. 1 (2020). When an evidentiary hearing on a postconviction petition is granted, the petitioner bears the burden of proof to establish the facts alleged in the petition "by a fair preponderance of the evidence." Minn. Stat. § 590.04, subd. 3 (2020). In cases where alleged newly discovered evidence is false trial testimony, we apply the *Larrison* test. *Sutherlin v. State*, 574 N.W.2d 428, 433 (Minn. 1998) (applying the test adopted by federal courts in *Larrison v. United*

States, 24 F.2d 82, 87-88 (7th Cir. 1928)). The *Larrison* test requires the petitioner to establish that a material witness's testimony was false and that absent the false testimony, the jury might have reached a different conclusion. *Martin v. State*, 825 N.W.2d 734, 740 (Minn. 2013).¹ Establishing inconsistencies between trial testimony and a subsequent statement falls short of establishing that the trial testimony was false. *Opsahl v. State*, 710 N.W.2d 776, 782 (Minn. 2006) (concluding that "a simple statement contradicting earlier testimony is not sufficient" to satisfy the first prong of the *Larrison* test). We review the district court's denial of a petition for postconviction relief for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017).

Here, the district court concluded that Watkins failed to establish the first prong: that B.T.'s trial testimony was false. The district court found that B.T.'s recantation resulted from Watkins's continued pressure and reasoned that any discrepancies between B.T.'s trial testimony and her testimony at the evidentiary hearing likely resulted from the passage of time. We observe that portions of the testimony that B.T. provided at the evidentiary hearing are nearly indistinguishable from her trial testimony, including when B.T. reiterated at the evidentiary hearing her recollection that Watkins forced her into the

¹ The *Larrison* test also includes a third prong: whether the petitioner was "taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after trial." *Martin*, 825 N.W.2d at 740. The petitioner must establish the first two prongs of the *Larrison* test, and courts should consider the third prong when the first two are satisfied but establishing the third prong is not required to obtain a new trial. *State v. Turnage*, 729 N.W.2d 593, 597 (Minn. 2007). We need not address the second or third prongs here because Watkins did not establish the first prong of the *Larrison* test.

car.² Importantly, B.T. testified at the evidentiary hearing that her recantation was not truthful and that her trial testimony was the truth. B.T. further stated that she had a better ability at the trial to recollect the events that occurred on March 6, 2014, than she did during the evidentiary hearing. The district court expressly found credible B.T.’s testimony that her recantation was not truthful, and we do not review the district court’s determinations of credibility. *E.g., Opsahl*, 710 N.W.2d at 782. For these reasons, the district court did not abuse its discretion in denying Watkins’ petition for postconviction relief.

Affirmed.

² The parties disagree whether certain testimony at the evidentiary hearing—including testimony that B.T. feared Watkins would assault her if she did not get into his vehicle—could establish the elements of felony kidnapping. We need not address this issue, however, because it relates to the second prong of the *Larrison* test.