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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1183**

Eric John Henderson-Bey, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 12, 2018
Affirmed
Bjorkman, Judge**

Dakota County District Court
File No. 19HA-CR-11-1922

Zachary A. Longsdorf, Longsdorf Law Firm, PLC, Inver Grove Heights, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Rodenberg, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the denial of his petition for postconviction relief based on the victim's recantation of her trial testimony. We affirm.

FACTS

Appellant Eric Henderson-Bey was convicted after a 2012 jury trial of one count of first-degree criminal sexual conduct and three counts of second-degree criminal sexual conduct involving O.W., his girlfriend's daughter, and one count of engaging in a pattern of harassing conduct involving O.W. and her sister, C.W. The convictions were based on repeated conduct that occurred over multiple years. On direct appeal, this court affirmed his convictions. *State v. Henderson-Bey*, No. A13-0165, 2015 WL 404350, at *1 (Minn. App. Feb. 2, 2015), *review denied* (Minn. June 30, 2015).

Henderson-Bey timely petitioned for postconviction relief, alleging that newly discovered evidence supports his claim of innocence and that his trial counsel was ineffective.¹ The petition included the transcript of a July 2016 videotaped conversation during which O.W. recanted her allegations. The district court granted an evidentiary hearing, during which Henderson-Bey presented two witnesses: his brother, T.J.-B., and his brother's girlfriend, O.B. T.J.-B. testified that during a casual lunch, O.W. told them that she had made up the allegations against Henderson-Bey. T.J.-B. denied making any attempt to intimidate or threaten O.W. O.B. stated that she surreptitiously recorded the conversation, because "[s]omething just told me to record what was being talked about so I did." The district court also viewed the video.

At the end of the hearing, O.W. testified that she told T.J.-B. and O.B. she had lied during her trial testimony, and that she had repeated her recantation to a police detective.

¹ Henderson-Bey does not argue ineffective assistance of counsel in this appeal.

But O.W. reaffirmed her trial testimony and said that she had lied when speaking to T.J.-B., O.B., and the detective because she was “scared,” she “thought that something was going to go down,” and she was afraid that T.J.-B. and O.B. “were going to harm me or something.” She also reported being pressured by her mother to deny that Henderson-Bey had abused her. O.W. acknowledged that she was diagnosed with bipolar disorder before the trial, she was on medication during the trial, and continued to take medication to treat the disorder. She had only recently been discharged from a hospitalization when she met with T.J.-B. and O.B., and she thought that may have prevented her from telling them the truth. The district court denied Henderson-Bey’s postconviction petition, finding O.W.’s testimony credible and the testimony of T.J.-B. and O.B. not credible. Henderson-Bey appeals.

D E C I S I O N

We review a postconviction court’s decision for an abuse of discretion. *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012). We “will not reverse an order unless the postconviction court exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015) (quotation omitted).

When a defendant alleges that a witness offered false trial testimony, a new trial may be granted if (1) the postconviction court is “reasonably well satisfied” that a material witness’s testimony was false; (2) without the testimony, a jury “might” have reached a different conclusion; and (3) the defendant was surprised by the false testimony or did not learn of its falsity until after trial. *State v. Nicks*, 831 N.W.2d 493, 511 (Minn. 2013)

(quotation omitted) (applying test from *Larrison v. United States*, 24 F.2d 82, 87-88 (7th Cir. 1928)).

Henderson-Bey argues that the district court abused its discretion by denying a new trial because the July 2016 videotape is reliable evidence concerning O.W.'s allegations. The state counters that the district court did not clearly err in finding O.W.'s trial testimony was truthful. We agree with the state.

The district court² found that (1) O.W. was frightened by T.J.-B. and O.B., and feared that “they would harm her if she refused to say that her trial testimony was untrue”; (2) the video showed that O.W. became increasingly upset during the conversation and demanded to be taken home; (3) T.J.-B. “continually pressed [O.W.] to talk about the familial sexual abuse loudly in the public restaurant”; and (4) O.W. became more upset as T.J.-B. “berated her regarding [Henderson-Bey’s] actions, and attempted to justify [Henderson-Bey’s] behavior, which a jury has deemed criminal.” And the district court expressly found that T.J.-B. and O.B. were not credible witnesses and O.W.'s trial testimony was credible, and her “believable” testimony at the evidentiary hearing affirmed her trial testimony. Because record evidence supports these findings, we discern no clear error.

Henderson-Bey does not challenge the district court’s application of the law, arguing that the first prong of the *Larrison* test is dispositive. Based on its factual determinations, the district court concluded that it was “not reasonably well-satisfied that

²The same judge presided over both the trial and the postconviction evidentiary hearing.

the [trial] testimony given by [O.W.], a material witness, was false” and “[O.W.’s] recantation did not have sufficient indicia of trustworthiness because the video documenting the recantation involved intimidation, and the testimony of the two witnesses who observed the recantation was not credible.” *See Martin v. State*, 825 N.W.2d 734, 740-41 (Minn. 2013) (stating that “a court cannot be reasonably certain the recantation is genuine unless it contains sufficient indicia of trustworthiness” (quotation omitted)). In short, the district court properly applied the law concerning witness recantation to the unique facts of this case.

The district court applied the correct legal standard, and the record evidence supports the court’s factual findings. Accordingly, we conclude that the district court did not abuse its discretion by denying Henderson-Bey’s postconviction petition.³

Affirmed.

³ Henderson-Bey argues that this court should consider whether a less deferential standard of review should be applied. Generally, this court, “as an error correcting court, is without authority to change the law.” *Lake George Park, L.L.C. v. IBM Mid-Am. Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998), *review denied* (Minn. June 17, 1998).