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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0201**

Mohamed Adel Alwan, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 11, 2021
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-14-34073

Frederick J. Goetz, Goetz & Eckland P.A., Minneapolis, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and
Halbrooks, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from an order denying postconviction relief, appellant Mohamed Adel Alwan argues that the district court abused its discretion by concluding that, although Alwan received deficient representation from his trial counsel in some respects, his Sixth Amendment right to effective counsel was not violated because he was not prejudiced by his counsel's performance. We affirm.

FACTS

This postconviction matter arises from Alwan's conviction for attempted second-degree intentional murder.¹ The facts underlying the conviction are drawn from his jury trial and are described below and in our opinion affirming Alwan's conviction on direct appeal, *State v. Alwan*, No. A16-0641, 2017 WL 562520 (Minn. App. Feb. 13, 2017).

The shooting and R.G.'s identification of Alwan to police

In November 2014, R.G. was hosting a party with approximately ten people in his rented hotel room in Bloomington when an argument broke out and R.G. asked some of his guests to leave. Between a half hour and one hour later, several people returned to the room. R.G. heard a knock on the door and opened it. When he did, a man hit R.G. on the head with a gun and then shot him twice, grazing R.G.'s hip and hitting his forearm. The shooter fled, and police were called.

¹ The jury also found Alwan guilty of first-degree assault.

At the scene, R.G. gave a description of the shooter to one of the responding police officers. R.G. described the shooter as a “light-skinned Somali male, approximately 5 [feet] 10 [inches tall], with an Afro, wearing a black hooded sweatshirt and a black stocking hat.” After police took R.G. to the hospital, R.G. gave a statement to a detective. R.G. again described the shooter as a light-skinned male about five feet ten inches tall who had “Afroish style” hair and had something “weird about his tooth,” such as a “chip.”

Two days later, the detective and another officer met with R.G. and showed him a photo lineup. R.G. vacillated between two photos but ultimately identified the photo of Alwan as that of the shooter. R.G. told the officers that “Illeg” had come back to the party with a gun and shot him. R.G. again mentioned the shooter’s tooth, saying it was cracked or broken. The officers thought R.G. seemed to be alert and oriented to time and place when they met with him.

The detective learned from R.G. that the name “Illeg” “meant something about a tooth.” *Alwan*, 2017 WL 562520, at *2. The detective also learned that Alwan went by the nickname “Illeg,” and the detective personally observed that Alwan had a chipped tooth.

Evidence from the hotel and from party guests

Hotel employee D.K. was working at the front desk the night of the shooting. While working at the front desk, he would watch surveillance video of the hotel exits. On the video, he saw a man leave the hotel at around 4:40 a.m. Less than an hour later, D.K. saw the same man return and he buzzed the man back into the hotel. D.K. saw the man walk toward R.G.’s hotel room. D.K. observed that the man was a light-skinned Black male, wearing a hooded sweatshirt, with his hair half in an Afro and half in braids. D.K. thereafter

received a call about a shooting in R.G.'s room. D.K. started walking toward the elevator to go to the room, and he saw the same man run down the stairs and out the back door. At trial, D.K. identified the man that he saw at the hotel and in the video as Alwan, who was sitting in the courtroom.

I.H., a guest at R.G.'s party, stated she recalled seeing at the party a light-skinned Somali male approximately five feet ten inches tall with his hair half braided and half in an Afro but testified that she did not see the shooting and did not know who shot the victim. Another guest, H.M., identified Alwan as being at the party.

Trial testimony of L.G.

While Alwan was in jail awaiting trial, he spoke frequently with a fellow inmate, L.G. At trial, L.G. testified to those conversations. L.G. testified that Alwan told him that he was a Crip. L.G. went on to testify that the Crips are a well-known street gang and that Alwan said he was an "active shooter" for the Crips. He testified that Alwan stated that he does not fight, he shoots. L.G. further testified that Alwan told him that Alwan "cracked" on R.G., meaning that he had shot him, in connection with money and gang violence. L.G. testified that Alwan told him that the state did not have a case because Alwan was going to send someone to threaten R.G. into retracting his statement.

According to the parties, L.G. testified while wearing an orange jumpsuit. On cross-examination, defense counsel elicited testimony that L.G. was in custody, had been escorted to the courthouse, and had his lawyer present in the courtroom. Defense counsel did not ask questions regarding why L.G.'s attorney was present or what charges L.G. was facing. L.G. testified that he contacted prosecutors to let them know he had information

about an attempted murder and acknowledged that he was hoping to get a benefit from his testimony but that nothing had been promised.

Trial testimony of R.G.

At trial, R.G. retreated from his previous statements to police regarding the shooter. He said that the man who shot him was a Somali male, approximately five to six feet tall, with long hair in a ponytail and light skin. R.G. said he could not remember telling police anything about the shooter's smile or teeth. He testified that, when he spoke with police at the hospital on the night of the shooting, he was taking a lot of pain medication. He said that, when he picked Alwan's photo out of the photo lineup, he was under the influence of medications, was confused about the ethnicities of the persons in the photos, and picked Alwan's photo because it looked familiar. R.G. said that he knew who shot him and that it was not Alwan. He said he knew Alwan as "Moe," not "Illeg." He denied being under any pressure to give this testimony at trial. He explained that he did not inform anyone earlier that Alwan was not the shooter because nobody had come to talk to him and because, since he had been released from jail, he had been "on the run" due to active warrants.

Direct appeal

On direct appeal, Alwan argued, among other things, that the district court violated his confrontation right by limiting his cross-examination of L.G. *Alwan*, 2017 WL 562520, at *1. We rejected the argument, observing that Alwan's trial counsel elicited from L.G. that "he was in custody at the time he testified, that he had an ongoing case, that he told his attorney about Alwan's admission, that he was hoping for some kind of benefit, and that

his attorney was present in the courtroom.” *Id.* at *5. Finding no error with any raised issue, we affirmed Alwan’s convictions.

Postconviction petition

In 2019, Alwan filed a petition for postconviction relief, arguing that his trial counsel’s performance was constitutionally deficient in three ways: (1) failure to adequately investigate L.G.; (2) inadequate examination of L.G. for bias or motive and failure to impeach L.G. based on his prior felony convictions; and (3) failure to object to the introduction of L.G.’s gang-related testimony.

Following a two-day evidentiary hearing, the district court found that Alwan’s trial counsel did not exercise the customary skills and diligence that a reasonably competent attorney would exercise and that counsel’s performance therefore fell below an objective standard of reasonableness on each complained-of deficiency in performance. In detailed findings, the district court found that defense counsel had failed to perform adequate discovery to uncover L.G.’s prior felony convictions and his previous cooperation with authorities, as well as information about the serious penalties that L.G. was facing due to a pending federal indictment and his consequent cooperation with federal authorities. The district court concluded that counsel therefore failed to adequately confront L.G. with his past convictions as a challenge to his credibility or with his cooperation with federal authorities as a motive to lie. In addition, the district court concluded that defense counsel unreasonably failed to object to L.G.’s testimony regarding Alwan’s alleged participation in a gang since the shooting was not alleged to have been gang-related.

The district court concluded, however, that trial counsel's objectively unreasonable performance did not deprive Alwan of a fair trial. It reasoned that evidence of L.G.'s credibility and motive to lie was presented to the jury and that other evidence establishing Alwan as the shooter leaves no reasonable possibility that the jury would have decided differently had it known more about L.G.'s criminal history or his cooperation arrangement with federal authorities.

This appeal follows.

DECISION

To prevail on a claim for ineffective assistance of counsel, an appellant must show that trial counsel's representation "(1) fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Petersen v. State*, 937 N.W.2d 136, 139-40 (Minn. 2019) (quoting *Strickland v. Washington*, 466 U.S 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)). "The likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 112, 131 S. Ct. 770, 792 (2011) (citation omitted). When determining whether a defendant was prejudiced by counsel's performance, "we consider the totality of the evidence before the jury." *Pearson v. State*, 891 N.W.2d 590, 600 (Minn. 2017) (citation omitted). A court may dispose of a *Strickland* claim on one prong without considering the other. *Petersen*, 937 N.W.2d at 140 (quotation omitted).

The state does not challenge the district court's determination that Alwan's trial counsel's performance was objectively unreasonable. Therefore, the only issue before us

involves the second prong of *Strickland*: whether there is a reasonable probability that, but for Alwan’s trial counsel’s constitutionally deficient errors, Alwan would have been found not guilty. We review postconviction decisions for an abuse of discretion. *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020). Reviewing courts uphold factual determinations if supported by sufficient evidence and review issues of law de novo. *Id.* However, the two-part *Strickland* analysis is subject to de novo review as it involves mixed questions of law and fact. *Pearson*, 891 N.W.2d at 600 (quotation omitted).

Alwan argues that his counsel’s failures to adequately investigate and cross-examine L.G. prejudiced him because L.G. was “the most important witness against” him at trial. Alwan contends that, without L.G.’s testimony, the state’s case was not overwhelming. He cites R.G.’s denial at trial that Alwan shot him; the absence of surveillance footage showing the shooting itself; the absence of physical evidence connecting Alwan to the shooting; the presence of others, in addition to Alwan, at the scene; and inconsistencies between descriptions of Alwan’s hairstyle and his actual hairstyle.

The state counters that its case did not rest solely on L.G.’s testimony, asserting that, even without L.G.’s testimony, the evidence established Alwan as the shooter. The state cites R.G.’s picking Alwan out of the photo lineup; R.G.’s description of the shooter to police, which, the state asserts, matched Alwan and the surveillance footage; R.G.’s description of a chipped tooth; R.G.’s identification of the shooter as “Illeg” and R.G.’s description of the term “Illeg” as relating to a tooth; and Alwan’s actual chipped tooth. In addition, the state cites the evidence of D.K.’s identification of Alwan as the man who left

the hotel, returned, walked toward R.G.'s room, and ran down the stairs and out the back door after the shooting, as well as evidence from other guests that established Alwan's presence at the party that night. The state argues that in light of this evidence, and considering that the jury already knew that L.G. was a jailhouse informant who had some reason to cooperate with authorities, there is no reasonable probability that additional evidence challenging L.G.'s credibility and motives would have led to a different result.

We agree with the state. While the benefit that L.G. could possibly have received in exchange for his testimony was indeed substantial and the jury was not made aware of its full extent, the jury did know that L.G. was in custody, was facing charges, and was hoping to receive some benefit in exchange for testifying. Thus, the jury had a basis to know that L.G. had an incentive to testify favorably for the state when it evaluated the reliability of his testimony. And, while the jury did not learn of L.G.'s past felony convictions, the fact that L.G. was a jailhouse informant gave them some reason to question his credibility. *See, e.g., State v. Smith*, 541 N.W.2d 584, 588 (Minn. 1996) (denying a new trial on the ground of prosecutorial misconduct when a reasonable jury would not have reached a different result if it had learned of state's witness's plea bargain, when the witness's credibility had been impeached by other methods). Moreover, even if the jury would have entirely discounted L.G.'s testimony, the jury was presented with other compelling evidence that Alwan was the shooter at the hotel, including testimony from other guests placing Alwan at the party, the surveillance footage of—and D.K.'s testimony identifying Alwan as—the person entering and leaving the hotel shortly before and immediately after the shooting,

and R.G.'s statements to police shortly after the shooting identifying Alwan as "Illeg" and "Illeg" as the person who shot him.

Alwan also argues that defense counsel's failure to keep out L.G.'s testimony regarding gangs also prejudiced him because the testimony was inflammatory and not relevant. But, even assuming that L.G.'s testimony relating to gangs would have been excluded had it been objected to, we conclude that there is no reasonable probability of a different result in light of the totality of the evidence we just described.

For the same reason, we reject Alwan's argument that, together, defense counsel's deficiencies demand reversal. A "reasonable probability" of a different outcome means a probability "sufficient to undermine confidence in the outcome." *State v. Smith*, 476 N.W.2d 511, 514 (Minn. 1991) (quoting *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068). Given the evidence from other witnesses, including the testimony of police officers, other party guests, and the hotel employee, we conclude that defense counsel's deficiencies, even considered together, do not undermine confidence in the outcome of this trial.

In sum, because Alwan has not shown that there is a substantial likelihood that the result of the proceeding would have been different but for the deficiencies in trial counsel's performance, he has not satisfied the second prong of the *Strickland* test.

Affirmed.