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STATE OF NEBRASKA, APPELLEE, V. EDWARD ROBINSON, JR., APPELLANT.

___ N.W.3d ___

Filed October 2, 2026. No. S-25-188.

1. **Criminal Law: Motions for New Trial: Evidence: Appeal and Error.** A de novo standard of review applies when an appellate court is reviewing a trial court's dismissal of a motion for a new trial under Neb. Rev. Stat. § 29-2102(2) (Reissue 2016) without conducting an evidentiary hearing.
2. **Evidence: Words and Phrases.** Newly discovered evidence is evidence material to the defense that could not with reasonable diligence have been discovered and produced in the prior proceedings.
3. **Criminal Law: New Trial: Evidence.** Because the evidence must have existed at trial for it to be uncovered after the trial, evidence newly created after trial does not satisfy Neb. Rev. Stat. § 29-2101(5) (Reissue 2016).
4. **Criminal Law: Motions for New Trial: Evidence.** A defendant is entitled to an evidentiary hearing on a claim of newly discovered evidence when the motion for a new trial and the supporting materials (1) satisfy the form and content requirements of Neb. Rev. Stat. §§ 29-2102 and 29-2103 (Reissue 2016); (2) satisfy the timeliness requirements of § 29-2103; and (3) allege facts that, if true, warrant an evidentiary hearing pursuant to § 29-2102(2).
5. **Criminal Law: Motions for New Trial: Evidence: Proof.** The requirements for an evidentiary hearing on a motion for a new trial based upon newly discovered evidence are satisfied when the motion is supported by evidence in the form of affidavits, depositions, or oral testimony; the motion is filed within a reasonable time after the discovery of the new evidence; the evidence existed at the time of trial but could not, with reasonable diligence, have been discovered and produced; and the evidence alleges facts that, if true, are so substantial that there would have been a different outcome at trial.

6. **Criminal Law: Motions for New Trial: Evidence.** A motion for a new trial based upon newly discovered evidence must satisfy all of the necessary requirements to warrant an evidentiary hearing, a court may address the requirements in any order, and a defendant's failure to satisfy one requirement makes it unnecessary to address the others.
7. **Criminal Law: Motions for New Trial: Evidence: Time.** A motion for a new trial based on newly discovered evidence is timely if it was filed within a reasonable time after the new evidence is obtained, which is generally not in excess of 5 years.
8. **Criminal Law: New Trial: Evidence: Appeal and Error.** To determine whether newly discovered evidence is so substantial such that an evidentiary hearing is warranted, appellate courts assess the strength of the claimed newly discovered evidence, along with the strength of the evidence introduced at trial, and ask whether it is likely a different verdict would be reached.

Appeal from the District Court for Douglas County: J Russell Derr, Judge. Affirmed.

Gerald L. Soucie for appellant.

Michael T. Hilgers, Attorney General, and Erin E. Tangeman for appellee.

Funke, C.J., Cassel, Stacy, Papik, and Vaughn, JJ., and McManaman and Butler, District Judges.

Vaughn, J.

I. INTRODUCTION

In 2004, a jury found Edward Robinson, Jr., guilty of first degree murder and use of a deadly weapon to commit a felony for the shooting of Herbert Fant. Since then, Robinson has challenged the jury's verdicts twice—once on direct appeal and again when he appealed the district court's denial of his motion for postconviction relief. This court heard both appeals, and on both occasions, it affirmed the district court's ruling. For his third effort to overturn his convictions, Robinson has filed a motion for a new trial on the basis of newly discovered evidence. The evidence Robinson claims exonerates him is an affidavit obtained 14 years after

the conclusion of trial, in which the sole eyewitness who identified Robinson as the shooter recants his testimony. The district court denied Robinson's motion without first holding an evidentiary hearing, which is the sole basis of this appeal.

We agree with the district court that Robinson's proffered new evidence is unreliable, unsubstantial, and unlikely to have resulted in a different outcome at trial. As such, an evidentiary hearing was not warranted. Finding no reversible error, we affirm.

II. BACKGROUND

In our previous opinions addressing this case, we recounted the underlying facts in great detail. See, *State v. Robinson*, 272 Neb. 582, 724 N.W.2d 35 (2006) (*Robinson I*), *disapproved on other grounds, State v. Hagens*, 320 Neb. 65, 26 N.W.3d 174 (2025), and *abrogated State v. Thorpe*, 280 Neb. 11, 783 N.W.2d 749 (2010); *State v. Robinson*, 285 Neb. 394, 827 N.W.2d 292 (2013) (*Robinson II*). As they are not dispositive to the outcome of this appeal, we will not repeat them at length for a third time. Rather, we will limit our discussion to the relevant evidence adduced at Robinson's trial and the post-trial proceedings.

1. Evidence Adduced at Trial

At trial, the State alleged that Robinson shot and killed Fant in the parking lot of a fast-food restaurant. Robinson's purported motive was that he was angry with Fant because, during a heated argument, Fant had "disrespect[ed]" Robinson's wife. To prove its case, the State offered evidence, including the testimony of Joe Lockett, who was the only eyewitness present at the scene who identified Robinson as the shooter.

As the State's key witness, Lockett was subject to extensive cross-examination, especially regarding his extensive past and present criminal history. Robinson's counsel attacked Lockett's credibility by suggesting that Lockett had reason to testify against Robinson because Lockett thought that if he assisted the State with its investigation into Fant's murder,

he would receive a reduction in his sentence in an unrelated federal proceeding. Lockett admitted that he had cooperated with the hope that he would receive a more lenient sentence, but that the State had not yet agreed to do so. He also stated that he was aware there was no guarantee he would receive a reduction in his sentence, because any arrangement he made with prosecutors would be subject to the approval of a judge.

At the conclusion of trial, the jury found Robinson guilty of first degree murder and use of a deadly weapon to commit a felony. At the ensuing sentencing hearing, he was sentenced to life in prison for the murder conviction and, as a habitual criminal, to 10 years' imprisonment for the use of a deadly weapon conviction, with both sentences to be served consecutively.

2. Robinson's Prior Appeals

In *Robinson I*, one of Robinson's assignments of error was that there was insufficient evidence to support his convictions, contending that because Lockett was not a credible witness, no credible witness had placed him at the scene of the crime. We found these arguments without merit, concluding that there was sufficient evidence to support the jury's finding that Robinson killed Fant. *Robinson I, supra*. In *Robinson II*, we once again found that there was ample evidence to support Robinson's convictions, stating that Robinson had a motive to kill Fant, that they were arguing at the time of the shooting, and that there was an eyewitness who identified Robinson as the killer.

3. Pro Se Motion for New Trial

In 2019, Robinson filed his first motion for a new trial on the basis of "newly discovered evidence." In his motion, Robinson explained that, through the use of a private investigator, he had obtained affidavits from four individuals—Jeremy Webb, Ollie Blake, Robinson's brother, and, crucially, Lockett—that proved his innocence. Robinson argued that this new evidence was so substantial that, had it been available, there would have been a different outcome at his trial.

In his affidavit, Webb blamed Fant's death on DeMar Haywood, Robinson's nephew, and stated that Robinson was not present at the fast-food restaurant on the night that Fant was shot. Robinson's brother, who is Haywood's father, also blamed Haywood for Fant's death, stating in his affidavit that he lied to police about the fact that Haywood killed Fant because he wanted to "protect [his] teenage son."

Blake, the only affiant who testified at trial, claimed that police told him that they really wanted to "get" Robinson and attempted to coerce Blake to testify against him. As for Lockett, he swore that his trial testimony was "false" and that he testified Robinson was the shooter because he was coerced by prosecutors and because he hoped that his sentence in his federal case would be reduced.

4. Amended Motion for New Trial

In 2023, Robinson retained counsel who dismissed Robinson's pro se motion for a new trial and filed an amended motion, also on the basis of "newly discovered evidence." The fundamental premise of the amended motion was the same as the pro se motion: Lockett lied on the witness stand. Attached to the amended motion were over 180 pages of documents, including affidavits from three new affiants, none of whom testified at trial. Like the four affidavits Robinson produced with his 2019 pro se motion, the new affidavits supported Robinson's contention that Lockett's testimony was false; but, rather than focus on Robinson's innocence, they focused more on Lockett's propensity for dishonesty and his willingness to cooperate with police in exchange for a "deal."

Without holding a hearing, the district court denied Robinson's amended motion. The district court began its analysis by stating that recantation testimony is "'notoriously unreliable'" and seldom serves as a sufficient basis to warrant a new trial. The district court emphasized that Lockett had been thoroughly cross-examined at trial and that the jury reached its verdicts with the knowledge that Lockett may

have had an ulterior motive to identify Robinson as the one who was responsible for Fant's death. It also explained that for a party to prevail on a motion for a new trial on the basis of "newly discovered evidence," the proffered evidence must do more than simply attack the credibility of the witness who is claimed to have provided false or inaccurate testimony. Consistent with this principle, the district court concluded that the additional affidavits Robinson proffered were little more than cumulative attempts to attack Lockett's credibility. Robinson's amended motion was denied.

III. ASSIGNMENT OF ERROR

Robinson assigns, restated, that the district court erred when it denied his amended motion for a new trial without an evidentiary hearing in contravention of our ruling in *State v. Boppre*, 315 Neb. 203, 995 N.W.2d 28 (2023).

IV. STANDARD OF REVIEW

[1] A de novo standard of review applies when an appellate court is reviewing a trial court's dismissal of a motion for a new trial under Neb. Rev. Stat. § 29-2102(2) (Reissue 2016) without conducting an evidentiary hearing. *State v. Hill*, 308 Neb. 511, 955 N.W.2d 303 (2021).

V. ANALYSIS

Robinson asserts that the district court erred when it denied his amended motion for a new trial without first holding an evidentiary hearing, which he claims is required by our ruling in *Boppre, supra*. Not only is *Boppre* applicable, but its underlying facts and procedural history are overwhelmingly similar to this case. As in *Boppre*, Robinson's amended motion is unwieldy and accompanied by over 100 pages of documents. He makes conclusory statements of law unsupported by coherent legal analysis, and he fails to clearly state when his new evidence was found, why it could not have been discovered and produced at trial, and why it is so substantial that we should overturn the jury's verdicts.

1. Motions for New Trial and Requirements for Evidentiary Hearing

[2,3] Neb. Rev. Stat. § 29-2101 (Reissue 2016) governs when a party may file a motion for a new trial in a criminal proceeding and provides seven reasons when and why they may do so. One reason is when a party obtains "newly discovered" evidence. See § 29-2101(5). See, also, *Hill, supra*. Generally, newly discovered evidence is evidence material to the defense that could not with reasonable diligence have been discovered and produced in the prior proceedings. *State v. Jackson*, 264 Neb. 420, 648 N.W.2d 282 (2002). Newly "available" evidence does not constitute "newly discovered" evidence that provides a basis for granting a new trial pursuant to § 29-2101(5). See *State v. Bartel*, 308 Neb. 169, 953 N.W.2d 224 (2021). Because the evidence must have existed at trial for it to be uncovered after the trial, evidence newly created after trial does not satisfy § 29-2101(5). *State v. Brown*, 310 Neb. 318, 965 N.W.2d 388 (2021).

[4] Although the above legal principles still generally apply, Robinson has asked that we evaluate the narrower issue of whether he was entitled to an evidentiary hearing prior to the district court's ruling on his motion for a new trial. A defendant is entitled to an evidentiary hearing on a claim of newly discovered evidence when the motion for a new trial and the supporting materials (1) satisfy the form and content requirements of § 29-2102 and Neb. Rev. Stat. § 29-2103 (Reissue 2016); (2) satisfy the timeliness requirements of § 29-2103; and (3) allege facts that, if true, warrant an evidentiary hearing pursuant to § 29-2102(2). See *State v. Boppre*, 315 Neb. 203, 995 N.W.2d 28 (2023).

[5,6] These requirements are satisfied when the motion is supported by evidence in the form of affidavits, depositions, or oral testimony; the motion is filed within a reasonable time after the discovery of the new evidence; the evidence existed at the time of trial but could not, with reasonable diligence, have been discovered and produced; and the evidence alleges facts

that, if true, are so substantial that there would have been a different outcome at trial. *Id*. Because the motion and supporting materials must satisfy each of these requirements, a court may address them in any order, and a defendant's failure to satisfy one requirement makes it unnecessary to address the others. See *id.*

(a) Form and Content Requirements

We will first address whether Robinson's motion complies with the statutory form and content requirements of §§ 29-2102 and 29-2103. As noted above, these require that a defendant's motion for a new trial clearly and succinctly states the grounds for the motion and must be supported by evidence in the form of affidavits, depositions, or oral testimony.

Although the basis for Robinson's amended motion is relatively clear—he claims that he has obtained new evidence that proves Lockett was untruthful at trial—it is far from succinct. It is meandering and convoluted, and, as with the motion for a new trial in *Boppre, supra*, we find no meaningful effort by Robinson to comply with the statutory requirements necessary to establish the need for an evidentiary hearing.

The remainder of the documents attached to Robinson's motion consist of police reports; correspondence; pleadings from outside proceedings; a transcript of Lockett's September 16, 2003, sentencing hearing; and other items that do not comply with § 29-2102. These documents, therefore, will not be considered.

(b) Timeliness Requirements

[7] *Boppre, supra*, also requires that a party requesting an evidentiary hearing comply with the timeliness requirements of § 29-2103(4). A motion for a new trial based on newly discovered evidence is timely if it was filed within a reasonable time after the new evidence is obtained, which is generally not in excess of 5 years. See *State v. Bartel*, 308 Neb. 169, 953 N.W.2d 224 (2021).

It is questionable whether Robinson's motion complies with the timeliness requirements of § 29-2103(4). The jury reached its verdict 22 years ago in 2004, and Robinson did not file his first motion for a new trial until April 25, 2019. The district court also notes that Lockett's affidavit, the linchpin of Robinson's motion and this appeal, is dated 2018—14 years after his trial and 6 years prior to when he filed his amended motion for a new trial in 2024.

Although the timeliness with which Robinson filed his motion is tenuous, we do not find this to be dispositive.

(c) Different Outcome at Trial

[8] The final requirement of *Boppre, supra*, is that the motion for a new trial set forth sufficient facts to establish that the new evidence, if it had been available, would have resulted in a different outcome at trial. To determine whether newly discovered evidence is so substantial such that an evidentiary hearing is warranted, we assess the strength of the claimed newly discovered evidence, along with the strength of the evidence introduced at trial, and ask whether it is likely a different verdict would be reached. See *State v. Garcia*, 318 Neb. 228, 14 N.W.3d 525 (2024).

To avoid redundance, we will not provide an exhaustive list of the evidence the State put forth to prove its case. However, we will reiterate that there was circumstantial evidence that established Robinson had a motive to kill Fant, namely because Fant had gotten into an argument with Robinson's wife on the night of the shooting. Robinson's wife's vehicle, a white Yukon Denali, which had recently been driven, was found near the scene of the crime. Multiple witnesses consistently testified that there was a white sport utility vehicle in the parking lot of the fast-food restaurant when Fant was shot, and cellular location data also indicated that Robinson was in the immediate vicinity of the fast-food restaurant at or around the time of the shooting.

In addition, in his amended motion, Robinson emphasizes his assertion that Lockett falsely identified him at trial because he was hoping his federal sentence would be reduced. We agree with the district court that this argument lacks merit, because Lockett was cross-examined at length about this issue at trial and because the jury reached its verdicts with knowledge of Lockett's potential ulterior motive. We find that even absent Lockett's testimony, it is more likely than not that the jury would reach the same verdicts it did over 20 years ago.

VI. CONCLUSION

For the foregoing reasons, we conclude that the district court was not in error when it denied Robinson's request for an evidentiary hearing, and the district court's ruling is affirmed.

AFFIRMED.

FREUDENBERG and BERGEVIN, JJ., not participating.