

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

CASE NO: 2017-CF-015616-A-O
DIV.: 19

v.

DIRECTIONS TO CLERK PAGE 7

JEFFREY DAVIS,
Defendant.

_____ /

**ORDER GRANTING DEFENDANT'S AMENDED MOTION FOR
POSTCONVICTION RELIEF AFTER EVIDENTIARY HEARING**

THIS MATTER came before the Court on Defendant's Amended Motion for Postconviction Relief, filed through counsel on November 22, 2022, pursuant to Florida Rule of Criminal Procedure 3.850. An evidentiary hearing was held on May 31, 2024, and September 5, 2024. After reviewing Defendant's Motion, the State's Response, the testimony and argument presented at the hearing, the court file, and the record, the Court finds as follows:

PROCEDURAL HISTORY

On March 28, 2018, the State charged Defendant by Information with attempted first-degree murder with a firearm (count one), shooting at, within, or into a building (count two), shooting from a vehicle (count three), two counts of aggravated assault with a deadly weapon (counts four and five), and battery (count six). On February 1, 2019, the stated nol-prossed count six. On April 10, 2019, a jury found Defendant guilty of the lesser-included offense of attempted second-degree murder, with special findings that he actually possessed and discharged a firearm in the commission of the offense. The jury also found him guilty as charged on count two, count three, and count five, and guilty of the lesser-included offense of improper exhibition of a firearm on count four.

On April 24, 2019, the court sentenced Defendant to a term of 25 years, 20 of which is a minimum mandatory, in the Department of Corrections ("DOC") with credit for one year and 46 days' time served. He was sentenced to 15 years in DOC on count two, 15 years in DOC on count three, five years on count five, and sentenced to time served on count four. Defendant appealed. The Fifth District Court of Appeal ("DCA") affirmed the judgment and sentence and issued its Mandate on July 17, 2020. *Davis v. State*, 298 So. 3d 624 (Fla. 5th DCA 2020).

On April 30, 2019, Defendant filed a Motion for Correction of Illegal Sentence Claim of

Actual Innocence, which the court denied on May 2, 2019. On December 28, 2020, Defendant filed a second Motion to Correct Illegal Sentence, which he amended on June 22, 2021. The court denied his motion on August 4, 2021. Defendant then filed a Motion for Corrected Opinion Clarification and/or Rehearing on August 23, 2021, which the court denied. Defendant appealed the denial. The Fifth DCA affirmed the denial and issued its Mandate on February 22, 2022. *Davis v. State*, 333 So. 3d 196 (Fla. 5th DCA 2021).

On September 15, 2021, Defendant filed a Motion for Postconviction Relief. After being held in abeyance and various extensions, Defendant filed the instant Amended Motion for Postconviction Relief on November 17, 2022, and then a version with Defendant's signed oath on November 27, 2022. The State filed its Response on September 22, 2023. On January 19, 2024, the Court issued an Order Granting Evidentiary Hearing in Part and Denying in Part Defendant's Amended Motion. (*See* Attachment A – Order Granting Hearing). On February 4, 2024, Defendant filed a Motion for Rehearing as to ground six, which the Court granted. (*See* Attachment B – Order Granting Rehearing).

On May 31, 2024, the evidentiary hearing was held; however, the Court granted the defense's motion to bifurcate the hearing. On the 31st, Defendant, Lena Isaacson, and Nina Patterson testified. The hearing was recessed until September 5, 2024. On September 5, defense expert Amy Santoro testified. The Court reserved ruling on all grounds.

ANALYSIS & RULING

The following claims of ineffective assistance of counsel were argued at the evidentiary hearing:

Ground Two:

Defendant claims that trial counsel provided ineffective assistance by failing to call Lena Isaacson as a witness. According to Defendant, Isaacson would have been able to provide an alibi, specifically, that Defendant was with her on the date and time of the shooting—December 3, 2017, at 5:00 p.m. Defendant claims that Isaacson was available and willing to testify; however, trial counsel failed to contact Isaacson after Defendant informed them of the potential alibi witness.

The State requested the Court deny Defendant's claim because it is refuted by the record. According to the State, on April 18, 2018, at a bond hearing, Defendant testified that he had been at his shop on the date of the shooting from 8 a.m.– 6 p.m. and listed the individuals who saw him that day. Isaacson was not one of the people he mentioned.

At the hearing, Defendant testified that on the day of December 3, 2017, he was at his

automotive shop. He said that next to his automotive shop was a fenced-in trailer park operated by Isaacson. Defendant stated that sometime later that afternoon, he walked up to the fence of the trailer park and had a conversation with Isaacson about her daughter because he knew she just had an operation. It was during that conversation that he heard gunshots, somewhere between five and ten. Defendant stated that he told his trial counsel about the conversation he had with Isaacson, but trial counsel told him that she would not need Isaacson's testimony.

Isaacson testified at the hearing as well. She testified that she manages her family's trailer park that is next door to Defendant's auto shop. She recalled that late one afternoon in December of 2017 Defendant came up to the gate of the trailer park and asked her how her daughter was doing. During this conversation, she heard gunshots, roughly seven to ten. She said that she asked Defendant if he heard the gunshots as well. Isaacson said it was not unusual to hear gunshots, so they kept talking. She said their conversation lasted about thirty minutes. Isaacson stated that she was sure the conversation happened on December 3, 2017, because her daughter was released from jail December 2, 2017, and she knew the conversation happened the next day. Additionally, Isaacson stated that she would have been available to testify at trial had she been subpoenaed.

Nina Patterson, trial counsel for Defendant, testified at the hearing. She stated that Defendant's trial was her first solo felony trial. During her testimony, Patterson did not recall many details from her time representing Defendant. However, she did state that she did not recognize the name Lena Isaacson and that Defendant did not inform her about his conversation with that potential witness.

The Court finds Isaacson credible. Not only does it find Isaacson's testimony credible, but it also finds that her testimony is of such nature that it would cast doubt on Defendant's guilt if presented to a jury. At Defendant's trial, there was no physical evidence connecting him to the

crime. The only testimony that placed him as the shooter was the identifications made by two witnesses who gave inconsistent descriptions of the shooter.¹

The Court gives little weight to Patterson's statement that Defendant had never informed her about this potential witness. Patterson did not recall any details from her representation of Defendant; therefore, the Court will not rely on her recollection or any lack thereof.

Ground Three:

Defendant claims trial counsel was ineffective by failing to call a ballistics or crime scene expert at trial. According to Defendant, the physical and photographic evidence establishes that Witz's description regarding how the shooting occurred is impossible. Defendant argues that the bullet holes in Witz's vehicle contradict her testimony regarding the direction in which the vehicle driven by the shooter approached her.

In its response, the State claims that the testimony Defendant claims a ballistics or crime scene expert could provide is nothing other than facts the jury would determine based on Witz's testimony and is not expert testimony. According to the State, Defendant contends that an expert could have refuted Witz's testimony; however, Witz is not an expert, and her testimony consisted of facts that she observed, which is a credibility determination for the jury to make. Moreover, the State claims that Defendant's rendition of Witz's testimony is inaccurate.

Amy Santoro, an expert in crime scene reconstruction, testified that she reviewed the trial transcript and images from the crime scene, specifically attachments A – H that were attached to the State's Response to Defendant's Amended Motion. Santoro stated that it is her expert opinion that the testimony given at trial by Witz is inconsistent with how the photos depict the bullets

¹ Michael Joseph described the shooter as having dreads, beads, and a bandana around his mouth. (*See* Attachment C – Trial Transcript Excerpts pp. 198-200). He also specified that the shooter's dreads were hanging loose. *Id.* at 215. Tammy Witz described the shooter as having pulled back dreads, and she specifically stated he wore no face covering. *Id.* at 238, 260.

entered/hit Witz's vehicle. Santoro ultimately gave the opinion that Witz's testimony was inconsistent with the physical evidence that she reviewed.

Patterson testified that she did not consider hiring a ballistics/crime scene expert because she did not believe it would be helpful for the defense. When asked if she was worried about the inconsistencies between the physical evidence and the witness testimony, she said she was not. Instead, trial counsel stated that her defense strategy was to highlight the inconsistencies in the identification of Defendant as the shooter.

The Court found that trial counsel was deficient in failing to call a ballistics/crime scene reconstruction expert. As stated during the hearing, the Court noted that trial counsel appeared to have limited knowledge of the subject matter and found trial counsel's complete dismissal of the subject concerning.

Not only was trial counsel deficient, but this deficiency prejudiced Defendant. As Santoro stated at the hearing, her findings call into question the testimony of one of the State's main witnesses, Tammy Witz. If Santoro or a similar expert were to have testified at trial, it would not only have called into question Witz's testimony regarding the shooting but also her identification of Defendant.

This, taken together with the failure to call Isaacson to testify as to Defendant's alibi, leads the Court to find that trial counsel's deficient performance prejudiced the outcome of trial. Had trial counsel called Isaacson and a ballistics/crime scene reconstruction expert, there is a reasonable probability that the outcome of trial would have been different. Therefore, Defendant's request for relief on grounds two and three are granted.

Ground Six:

In ground six, Defendant claims that trial counsel failed to make the appropriate objections to the prosecutor's improper closing argument. According to Defendant, the Prosecutor improperly

argued that, because the police were originally called out for a domestic violence incident, the jury could infer why Christina Harvey did not testify at trial. Defendant contends that this statement amounts to an insinuation that Defendant committed some type of domestic violence offense against Harvey.

The statement in question was made by the prosecutor during their rebuttal argument after the defense opened the door to the issue of Harvey not testifying in its closing argument.

PROSECUTOR: So, Christiana Harvey, let's talk about her. First of all, there's this Discrepancy of whether or not she had a black eye and she had a busted nose or a busted lip, that doesn't matter. He's not charged with anything in reference to Christian Harvey. What do we know? We know something happened between him and Christiana Harvey. How do we know that? Well --

TRIAL COUNSEL: Objection, Your Honor.

THE COURT: Overruled. Go ahead.

PROSECUTOR: We have a detective, who only does missing persons or domestic violence cases, responding to the scene. He was personally called out to the scene to deal with this investigation because it involved domestic violence. He told you that himself. He

said he spoke to Christiana Harvey. She used to date the defendant. They were dating for about two years. Again, this started as a domestic violence case, if if you -- you can take your own personal experiences when dealing with victims of domestic violence, as to why they don't want to testify. You can consider those things.

(See Attachment C p. 470). The transcript shows that Patterson did object at the beginning of the statement, and her objection was overruled. However, she did not re-raise her objection at the end of the statement. Defendant believes that Patterson's failure to object to the last sentence of the Prosecutor's statement regarding Harvey severely prejudiced the outcome of trial.

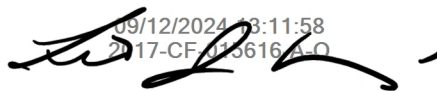
Notably, as the State brought up in its Response, Defendant's sole argument on direct appeal was that the trial court committed reversible error when it overruled Patterson's objection. The Fifth DCA rejected this argument and *per curiam* affirmed Defendant's judgment and sentence. *Davis v. State*, 298 So. 3d 624 (Fla. 5th DCA 2020). It appears that Defendant is trying to relitigate his direct appeal under the guise of ineffective assistance of counsel. Thus, the Court

finds that ground six is procedurally barred. *See Sanchez-Torres v. State*, 322 So. 3d 15, 20 (Fla. 2020) (citing *Freeman v. State*, 761 So. 2d 1055, 1067 (Fla. 2000) (“This issue was raised on direct appeal and cannot be relitigated under the guise of ineffective assistance of counsel.”); *see also Willacy v. State*, 314 So. 3d 246, 247 (Fla. 2021).

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

1. Defendant’s Amended Motion for Postconviction Relief is **GRANTED**.
2. Defendant’s Judgment and Sentence in the above-styled case are hereby **VACATED AND SET ASIDE**, and this matter shall be reset on the trial docket in Division 19.
3. Defendant shall remain in custody in the Orange County Jail without bond.
4. A hearing for determination of counsel is hereby set for September 24, 2024 at 9:00 a.m. in Courtroom 19D of the Orange County Courthouse, 425 N. Orange Avenue, Florida 32801.
5. Copies of Attachments A – C are incorporated by reference and will be filed under separate cover.
6. Parties may file a notice of appeal in writing within **thirty (30) days** of the date of rendition of this Final Order.
7. **The Clerk of Court is directed to mail a copy of this Order to Defendant, including an appropriate certificate of service, addressed as follows: Smart Communications/Orange County Department of Corrections, Jeffrey Davis, 24003590 BRCMBFNA, P.O. Box 9101, Seminole, Florida 33775-9174. The Clerk shall also file a copy of the certificate of service in the court file.**

DONE AND ORDERED in Orange County, Florida, on the date of electronic signature.



eSigned by Leticia Marques 09/12/2024 13:11:58 6G3xUdN0

LETICIA MARQUES
Circuit Court Judge

If you are a person with a disability who needs any accommodation in order to participate

in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator, Human Resources, Orange County Courthouse, 425 N. Orange Avenue, Suite 510, Orlando, Florida, (407) 836-2303, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

The foregoing was filed with the Clerk of Court by using the Florida Courts E-filing Portal System. Accordingly, a copy of the foregoing is being serviced on this day to all attorneys/interested parties identified on the ePortal Electronic Service List via transmission of Notices of Electronic Filing generated by the ePortal System. The Clerk was directed to serve a copy of the Order to the Defendant at the address above and file a Certificate of Service in the court file no later than three days from the date of this Order.

Electronic Service List

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