

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEMAR DEMON MATTHEWS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89966

FILED

MAY 29 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Appeal from denial of motion for new trial. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On September 30, 2006, Jemar Matthews and three other men fired guns toward 1271 Balzar Avenue in Las Vegas. The men fired 39 shots. The shooters killed Mersey Williams and injured Myniece Cook. Two other people who were in the house at the time were not injured.

After the shooting, the four men walked down the street and committed a carjacking which was witnessed by police responding to the shooting. Matthews drove the stolen car away and police pursued the vehicle. During the chase, Matthews exited the vehicle holding a firearm, and police saw his face.

Matthews was charged for his role in the crimes and the case went to trial. In May of 2007, a jury convicted Matthews of murder with use of a deadly weapon, conspiracy to commit murder, three counts of attempt murder with use of a deadly weapon, possession of a short-barreled rifle, robbery, two counts of robbery with use of a deadly weapon, and two counts of assault with a deadly weapon.

After the initial conviction, Matthews's case took a number of procedural turns. In 2017, the U.S. District Court for the District of Nevada granted Matthews post-conviction relief for federal constitutional violations that occurred during his first trial, *Matthews v. Neven*, 250 F. Supp. 3d 751, 755-56 (D. Nev. 2017). The State tried Matthews again, and again, a jury convicted Matthews on all counts. That second conviction was reversed by this court on appeal in *Matthews v. State*, 136 Nev. 343, 349, 466 P.3d 1255, 1262 (2020), due to a *Batson* issue. The State tried Matthews for a third time. At this third trial, for the first time, the State called Nicholas Owens as a witness. While Owens had not previously testified, he had given a statement to the police in 2007. Consistent with that statement, Owens testified that Matthews asked for help to obtain guns the night of the shooting. Owens also testified that no one made promises to him in exchange for his testimony. The jury convicted Matthews on all counts and Matthews was sentenced to an aggregate term of 40 years to life. We affirmed the conviction on appeal. *Matthews v. State*, No. 84339, 2023 WL 3408185 (Order of Affirmance, May 11, 2023).

In March of 2023, Owens signed a declaration recanting his testimony in the Matthews trial. The declaration was made in a separate, but related, case arising from a murder that proceeded the Balzar Avenue shooting. According to the prosecution, the Balzar Avenue shooting was committed in retaliation for this first murder. In the recantation, Owens asserted that (1) he had no personal knowledge of the Williams murder; (2) Matthews never approached Owens to obtain guns; (3) prior to Matthews's third trial, LVMPD Detective Andre Carter approached Owens about testifying to statements Owens made in 2007; and (4) Carter pressured Owens into testifying falsely even though Carter knew Owens had no

knowledge about the Williams murder. After learning of this declaration, Matthews filed a motion for a new trial. The district court denied Matthews's motion. Matthews now appeals.

On appeal, Matthews asserts he is entitled to a new trial based on Owens's recantation and the State's failure to disclose both the recording of Owens's 2007 statement and the alleged benefit Owens received for testifying. Matthews argues the State's failures constituted a violation of *Giglio v. United States*, 405 U.S. 150, 154 (1972). Because Matthews failed to demonstrate Owens's trial testimony was false and because the district court reasonably concluded the State did not violate *Giglio*, we conclude the district court properly denied the motion for new trial.

A district court may grant a new trial on newly discovered evidence grounds. NRS 176.515 We have previously outlined a four-part test to determine whether a district court may grant a new trial based on a witness's recantation of their trial testimony. *Callier v. Warden, Nev. Women's Corr. Ctr.*, 111 Nev. 976, 990, 901 P.2d 619, 627-28 (1995). In order to grant a motion for new trial, the district court must find: (1) a material witness's testimony was false; (2) the evidence demonstrating the falsity was newly discovered; (3) the evidence could not have been discovered and produced for trial "even with the exercise of reasonable diligence;" and (4) it is probable that had the false testimony not been admitted, a different result would have occurred at trial. *Id.* The decision to grant or deny such a motion rests soundly with the district court and we will not disturb the court's decision absent an abuse of discretion. *Rippo v. State*, 113 Nev. 1239, 1250, 946 P.2d 1017, 1024 (1997).

We conclude the district court exercised sound discretion in applying this test and in ultimately denying Matthews's motion. Matthews

failed to demonstrate Owens’s trial testimony was false. The record indicates Owens gave his initial statement to detectives in 2007. Owens then testified against Matthews at trial in 2021 consistent with the 2007 statement, 14 years after he initially spoke with detectives. Not until two years after his 2021 testimony did Owens claim his testimony was false. While Owens’s declaration was new, and could not have been discovered earlier, Matthews failed to prove the fourth component—that it was probable that had Owens not testified, a different result would have occurred at trial. Matthews had been convicted twice before without Owens’s testimony. A review of the record indicates that Owens’s testimony was relatively short and limited to Owens knowing Matthews and Matthews asking for guns. Nothing in Owens’s testimony tied Matthews directly to the shooting, as opposed to the police officers’ eyewitness identification, gunshot residue analysis, and other evidence presented at trial. As a result, we conclude the district court acted within its discretion in concluding that Owens’s trial testimony, even if false, did not materially affect the jury’s decision to convict Matthews. Because the district court properly concluded Matthews failed to satisfy all of the factors enumerated in *Callier*, we affirm the district court’s denial of Matthews’s motion.

The district court also exercised sound discretion in finding that there was no *Giglio* violation. *Giglio* requires the prosecution to disclose any relevant impeachment evidence pertaining to the credibility of witnesses. *Giglio*, 405 U.S at 154. In order to obtain a new trial in circumstances where the State withholds such evidence, a defendant must demonstrate the evidence pertains to a witness’s credibility and has a “reasonable likelihood” of affecting the judgment of the jury. *Id.* Here Matthews asserts that the State failed to turn over two items of

impeachment evidence, the 2007 recording of Owens and information related to any benefit received by Owens.

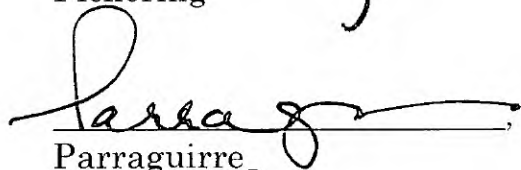
First, Matthews alleges that the State should have disclosed the 2007 recorded statement Owens made to police. Matthews failed to include the 2007 recording within the record on appeal. Because the record contains no evidence to the contrary, we must defer to the district court's finding that the recording contained only statements consistent with Owens's testimony at trial. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) ("When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision."). Given the finding of the district court that the recording mirrored Owens's testimony, we conclude the district court properly ruled the recording did not constitute impeachment evidence. Moreover, even if the recording had constituted impeachment evidence, Matthews failed to demonstrate the recording would have had a reasonable likelihood of affecting his conviction given the otherwise overwhelming evidence against him.

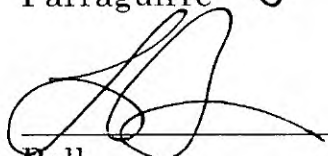
Second, we also conclude the district court exercised sound discretion when it determined Owens did not receive a benefit in exchange for his testimony against Matthews. Contrary to Matthews's allegations that Owens was released from custody immediately after he testified, the record indicates seven months elapsed between Owens's testimony and his release for unrelated reasons. Owens testified at trial that he had not been offered any benefit for testifying; the record also contains testimony from the district attorney and Detective Carter that Owens was offered no benefit for testifying. On appeal, Matthews fails to demonstrate the district court

erred when it made this finding. Therefore, we similarly affirm the district court's conclusion on this ground.

Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Bell

cc: Hon. Michelle Leavitt, District Judge
The Gersten Law Firm PLLC
Leventhal & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk