

No. 1-09-3405

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County.
	)	
v.	)	No. 02 CR 24916
	)	
JASSMON WILLIAMS,	)	Honorable
	)	Joseph M. Claps,
Petitioner-Appellant.	)	Judge Presiding.

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JUSTICE JOSEPH GORDON delivered the judgment of the court.  
Presiding Justice Epstein and Justice McBride concurred in the judgment.

**ORDER**

¶ 1 HELD: Because the affidavits submitted with petitioner's *pro se* postconviction petition arguably presented some evidence to support a claim of actual innocence based on newly discovered evidence, the trial court erred in dismissing that petition as frivolous and patently without merit.

¶ 2 Following a 2005 bench trial, petitioner Jassmon Williams was convicted for first degree murder and sentenced to 52 years' imprisonment. His conviction was affirmed on direct appeal.

He filed a *pro se* postconviction petition in September, 2009 alleging actual innocence based on

09-3405

newly discovered evidence, ineffective assistance of trial counsel, and a denial of his constitutional right to a fair trial. The trial court summarily dismissed his petition in November, 2009. This appeal followed.

### ¶ 3I. BACKGROUND

¶ 4 Petitioner was charged by indictment for the August 17, 2002 murder of Edward Brisbon. According to the State's theory of the case, petitioner shot Brisbon three times in the legs and buttocks because of a dispute over money. At trial, the State supported its version of events with the testimony of five witnesses. Michael Shed testified that he saw petitioner shoot Brisbon. Dawone Tucker testified that he heard gunshots and saw petitioner standing over Brisbon holding a handgun, but did not see petitioner fire any shots. Maurice Dorsey, testified that he witnessed the shooting but was unable to identify petitioner as the shooter. Charles Swain and James Anderson both recanted their previous statements in which they stated that they witnessed petitioner shoot Brisbon, and testified that they did not see him do so. Their previous sworn statements were admitted as substantive evidence.

¶ 5 Michael Shed testified at trial that he and Brisbon both were members of the Black Gangster New Breed street gang ("New Breeds"). He stated that on August 17, 2002, Shed rode with Brisbon in Brisbon's van to the west side of Chicago to purchase heroin. At the time, Shed was a drug dealer with four prior convictions for drug related offenses. When the two arrived at the corner of Kildare and Gladys, petitioner, who was also a member of the New Breeds, approached the van and told Brisbon that he needed to speak with him. Brisbon initially refused, but eventually capitulated and followed petitioner to the corner of Fifth Avenue and Kolmar. Upon arrival, Brisbon exited the van while Shed remained seated in the passenger seat.

09-3405

Shed testified that he observed Brisbon speak with petitioner and several other individuals as they stood approximately 25 feet away from the van. After a few minutes, petitioner shouted at Brisbon, drew a chrome handgun, and shot Brisbon three times. Brisbon fell to the ground, returned to his feet, and then ran back to the van and fell onto the floor of the vehicle between the seats. Shed started the van and drove Brisbon to Bethany Hospital.

¶ 6 Upon arrival at the hospital, Shed informed doctors what had happened and told them he was leaving to notify Brisbon's family. He then drove Brisbon's van to a vacant lot at 1142 South Independence Boulevard and left the vehicle there, whereupon he notified one of Brisbon's relatives of the shooting. Shed did not return to the hospital or to a police station.

¶ 7 Four days later, Shed met with detectives who showed him an array of 38 photographs. From that array, Shed identified Lamont Cooper as the shooter to the police. He testified that later the same day, after several conversations with the police, during which they gave him "information," he identified petitioner as the shooter from an array of five photographs, which he reaffirmed while on the witness stand.

¶ 8 Dawone Tucker testified that immediately prior to the shooting, he was at the corner of Fifth and Kolmar trying to purchase marijuana from an individual named "Lamont." Tucker was a member of the New Breeds and knew that petitioner oversaw New Breeds gang activity in his neighborhood. While he was standing at the corner, he heard three gunshots and looked eastwards, down Fifth Avenue where he observed petitioner walking towards Brisbon's van with a chrome pistol in his hand. Tucker testified that he had previously seen petitioner with the same gun, but did not see who fired the shots.

09-3405

¶ 9 Approximately 30 to 45 minutes after the shooting, Tucker spoke with petitioner in a convenience store at the corner of Kostner and Harrison, at which time petitioner told Tucker that he shot Brisbon, but was not trying to kill him. Tucker testified that he spoke with petitioner again the next day, wherein petitioner told him that if anyone said anything about the shooting, he “was gonna shoot them two times in the head.” Two weeks after the shooting, Tucker testified before a grand jury.

¶ 10 Tucker next spoke with petitioner on January 27, 2003, when Tucker went to see him in prison. Petitioner showed Tucker a copy of his grand jury testimony and then offered Tucker cash and rank in the New Breeds if he agreed to help him “get out the situation.” Petitioner told Tucker that if he did not help, Tucker was “gonna be a gangster regardless,” which he interpreted as a threat. Immediately after speaking with petitioner, Tucker filed a police report alleging police misconduct because petitioner’s lawyer put him at risk by giving petitioner the grand jury transcripts. Tucker later withdrew the report after police showed up at his home and threatened him by stating that he would have “problems with the system” if he signed it.

¶ 11 Maurice Dorsey testified that at the time of the shooting, he was in his second floor apartment at 806 South Kolmar. From his window, he observed several individuals “squared off” and talking to each other in the street about 80 to 90 feet away, while a maroon van and a beige Cutlass were parked nearby. When one of the men pulled out a chrome pistol, he left the window and ordered his children to go to the back of the apartment and then heard three to four gunshots, which he did not see. He returned to his window and observed an individual approximately 5'8" tall and wearing a white t-shirt holding a gun. He immediately called 9-1-1 to report the incident, but did not reveal his identity because he did not want to get involved in

09-3405

the investigation. Dorsey further testified that when he spoke to police about the shooting, he falsely told them he did not see anyone with a weapon or look out of his window until after the shots were fired.

¶ 12 Charles Swain testified that had known both Brisbon and petitioner since they were children. He stated that at the time of the shooting, he was on his porch, from which he observed petitioner and Brisbon turn the corner onto Kolmar. After they did so, he testified that he could not see or hear what happened afterwards from where he sat, recanting his previous statements to police and the grand jury.

¶ 13 Swain admitted in his testimony that four days after the shooting, he met with police detectives who questioned him about the shooting. He stated that he did not remember being shown any photographs, but acknowledged his signature on the back of a photograph of petitioner. He acknowledged telling police that on the day of the shooting, he was at the corner of Fifth and Kolmar where he observed petitioner speaking to Brisbon, putting his arm around Brisbon's neck and then shooting him in the leg two or three times. Swain then heard petitioner instruct the driver of the van to take that "bitch ass" to the hospital. Swain testified that he told the police these things because he was scared, as the police put him in a small room, yelled at him, and would not allow him to call home. Swain further admitted telling this same version of events to a grand jury. Swain's grand jury testimony was later admitted as substantive evidence.

¶ 14 James Anderson testified at trial that he knew petitioner from the neighborhood, but, in recantation of his previously sworn statement, denied witnessing the shooting. He acknowledged that two weeks after the shooting, he spoke with police detectives and signed a

09-3405

written statement. He stated that he was taken to a police station, handcuffed to a wall, and interrogated for six or seven hours. He stated that he only agreed to sign a statement because officers threatened to "put a case on him" if he did not cooperate and used violence and threats against him. He testified that the contents of his statement were false.

¶ 15 Anderson's statement was admitted as substantive evidence. In that statement, he averred that at the time of the shooting, he had known petitioner for approximately five months and had seen him every day since the two met. His statement further disclosed that on August 17, 2002, as he was leaving his girlfriend's home at 822 South Kolmar, he heard two shots and observed Brisbon stumbling to the ground approximately 20 feet away from him. Brisbon was bleeding from the legs and petitioner was standing over him with a black handgun in his hand.

Anderson's statement indicated that it was given voluntarily and that no threats or promises were made to him in exchange for his statement.

¶ 16 Detective Kevin Bor testified that he arrived at Bethany Hospital at approximately 3:15p.m. on the day of the shooting and learned that Brisbon had died. Upon leaving the hospital, he went to the 800 block of Kolmar where he noticed blood on the street and saw a stain on the pavement which appeared to be blood that had been washed or removed. Dorsey approached Bor and the two spoke briefly. Bor then proceeded to 1142 South Independence where Shed has parked Brisbon's van after taking him to the hospital. Bor observed that the front passenger seat was stained with blood.

¶ 17 Bor testified that on August 21, 2002, he brought Shed into the police station for questioning. Bor showed Shed a photo array with pictures of 38 individuals, but without a picture of petitioner, and Shed identified Lamont Cooper as the shooter. Bor then returned to

09-3405

the scene of the shooting to find Cooper, but was unable to do so. While at the scene, he spoke with Swain, who agreed to go with Bor to the police station. Once there, Swain identified petitioner as the shooter from an array of five photographs, and signed his name to the back of petitioner's photo. Bor then showed the same array of five photographs to Shed, who also identified petitioner as the shooter and signed his name to the back of petitioner's photo. The following morning, Shed and Swain were taken to testify before a grand jury.

¶ 18 Officer Edmond Zablocki testified that on August 31, 2002, he spotted petitioner standing next to a vehicle on the 4200 block of West Gladys. Zablocki asked petitioner to come to him, which caused petitioner to flee through a crowd of people and down a gangway at 4443 West Gladys. Zablocki soon lost sight of petitioner and began to search the area. During his search, Zablocki went to the rear door of 4443 West Gladys and was let in by Martha Dickerson. Zablocki eventually discovered petitioner lying on the third floor landing in the building's front stairwell and placed him under arrest.

¶ 19 Following the State's live witnesses, the stipulated testimony of Dr. Kendall Crowns, a Cook County medical examiner, was read to the court. Crowns' testimony indicated that he conducted an autopsy of Brisbon's body and concluded that he died from three gunshot wounds sustained to the left buttock, left thigh, and right thigh, and that the death was a homicide.

¶ 20 The state rested and petitioner then called Theresa Cooks as his only witness. Cooks testified that at approximately 2:00pm on the day of the shooting, she was parked outside a house located on Kolmer, near Fifth. She observed 7 to 10 males standing approximately 45 feet from her car and identified one of the men as petitioner. Cooks had known petitioner for 20 years, but had not seen him for five years before the day of the shooting. She stated that she saw

09-3405

three men arguing, but petitioner was not part of the conversation because he was standing five to six feet away. During the argument, the tallest of the three men pulled out a gun and started shooting. She observed another, shorter individual pull out a gun as well, but he did not shoot. After the shots were fired, she drove away and observed petitioner running from the scene.

¶ 21 On cross-examination, Cooks testified that on February 18, 2004, she spoke to Gustavo Martinez, a Cook County State's Attorney investigator. She denied telling Martinez that she could not remember the date or details of shooting very well because she was taking a lot of medication at the time. She also denied seeing petitioner at her mother's home seven or eight months before speaking to the investigator.

¶ 22 On re-direct examination, Cooks stated that on the date of her interview with Martinez, she was on blood pressure medication which made her sleepy, but was fine on the day of the shooting.

¶ 23 In rebuttal, the State called Martinez who testified that he interviewed Cooks on February 18, 2004. During that interview, Cooks stated that she could not remember the day, month, or year of the shooting, and was also uncertain as to whether or not petitioner had a gun because there was a large crowd. She told him that she could not remember the incident well because she was on a lot of medication at the time of the shooting and because several other shootings and murders in the area affected her ability to specifically recall the incident in question. Martinez further stated that Cooks told him that she had last seen petitioner seven or eight months prior to their interview.

¶ 24 After the defense rested, the trial court instructed petitioner on his right to testify on his

09-3405

own behalf. He told the court that he understood, but did not wish to testify. In his closing argument, defense counsel argued a theory of misidentification, insisting that Lamont Cooper, the individual initially identified by Shed, was the actual shooter. Defense counsel also argued that it was plausible that Swain's fear of the police caused him to implicate petitioner in his statement and grand jury testimony.

¶ 25 The court found petitioner guilty of first degree murder and sentenced him to 52 years' imprisonment. A direct appeal was taken to this court wherein petitioner contended (1) that the evidence was insufficient to convict him because it consisted of the testimony and un-sworn statements of convicted felons, gang members, and drug users whose identifications were the result of police pressure, and because two of the witnesses recanted their identifications at trial; and (2) that he was denied the effective assistance of trial counsel. This court affirmed petitioner conviction and sentence. *People v. Williams*, No, 1-05-2887 (unpublished order under Supreme Court Rule 23).

¶ 26 Petitioner filed his *pro se* postconviction petition on September 23, 2009 alleging (1) that three newly discovered exonerating affidavits proves his actual innocence; (2) that his trial counsel was ineffective for failing to call several witnesses; and (3) that the cumulative effect of these errors requires that he be granted postconviction relief. Submitted with petitioner's *pro se* petition were the affidavits of Crystal Rogers, Ceretta Brown, and Brandon Swain, which he argued, supported his contention that Lamont Cooper shot Brisbon.

¶ 27 Crystal Rogers stated in her affidavit that she was Lamont Cooper's girlfriend at the time of the shooting. She indicated that while she was with Cooper in his vehicle on the day of the shooting, they encountered a maroon minivan. Cooper sounded his horn and the minivan pulled

09-3405

over. Cooper instructed her to stay in the vehicle and she observed him walk over to the minivan and speak to an individual inside. She stated that "[a]fter about three to five minutes I heard some gun shots and I turned around in my seat and seen [Cooper] running back towards the car with a gun." Cooper put the gun in the trunk, reentered the vehicle, and instructed Rogers that she "better not mention anything to no one of what [she had] just seen." Rogers indicated that she did not say anything sooner because she "didn't want to get [her] family in any trouble because [she] knew that [Cooper] was a dangerous individual."

¶ 28 In her affidavit, Ceretta Brown stated that she met Rogers at a party in the summer of 2008 and since became friends. In April 2009, Brown told Rogers that she was going to visit petitioner in prison. Brown averred that Rogers then told her that "[petitioner] did not do [the shooting], because she was with her ex-boyfriend name lil Lamont when they pulled this minivan over and then Lamont shot this guy in the minivan who I knew from the neighborhood as Big Ed." Brown further indicated that Rogers "said the reason she never came forward was because she feared for her safety."

¶ 29 Brandon Swain, the brother of Charles Swain, stated in his affidavit that he was standing at the corner of Kolmar and 5th Avenue with some friends at the time of the shooting. A maroon van pulled up and the driver began talking to Cooper. The two men got into an argument and Swain stated that he saw Cooper "shoot the guy in the leg." Swain averred that petitioner was not the shooter. Swain further indicated that he "was afraid that if the police was messing with [his] brother and [petitioner], that they would involve [him]. So therefore [he] never came forward, and [denied] seeing the incident."

¶ 30 The trial court summarily dismissed petitioner's *pro se* postconviction petition on

09-3405

November 3, 2009 as frivolous and patently without merit, stating that "we have already held petitioner's constitutional rights were not violated by trial counsel and appellate counsel.

Consequently, these allegations do not support a 'free-standing' claim of actual innocence." This appeal followed.

### ¶ 31II. ANALYSIS

¶ 32 On this appeal, petitioner contends that the trial court erred in summarily dismissing his postconviction petition because (1) he alleged an arguable basis in law and in fact that he was actually innocent based on two newly discovered exonerating affidavits, (2) there was an arguable basis for finding his trial counsel was ineffective for failing to investigate several witnesses who may have contradicted the State's theory of the case, and (3) there was an arguable basis for finding that his trial counsel was ineffective for preventing him from testifying.

¶ 33 The Post-Conviction Hearing Act ("the Act") provides a mechanism by which a defendant may assert that his conviction or sentence resulted from a substantial denial of his constitutional rights. 725 ILCS 5/122-1 et seq. (West 2004); *People v. Coleman*, 183 Ill. 2d 366, 378-79 (1998). A petition filed under the Act must clearly set forth the respects in which the petitioner's rights were violated and must include affidavits, records, or other evidence supporting the petition's allegations. *Coleman*, 183 Ill. 2d at 379.

¶ 34 The Act establishes a three-stage process for adjudicating postconviction petitions. At the first stage, the court must review a petition and may summarily dismiss it as frivolous or patently without merit if it fails to present the gist of a constitutional claim. *People v. Cummings*, 375 Ill. App. 3d 513, 516 (2007). The "gist" standard is a low threshold. *People v.*

09-3405

*Edwards*, 197 Ill. 2d 239, 244 (2001). At this stage, all well-pleaded facts not positively rebutted by the record are taken as true. *People v. Sparks*, 393 Ill. App. 3d 878, 883 (2009). "[A] *pro se* petition seeking post-conviction relief under the Act \*\*\* may be summarily dismissed as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). Such a petition "is one which is based on an indisputably meritless legal theory or a fanciful factual allegation." *Hodges*, 234 Ill. 2d at 16. An indisputably meritless legal theory is one which is completely contradicted by the record, while fanciful factual allegations include those which are fantastic or delusional. *Hodges*, 234 Ill. 2d at 16-17. We review a court's dismissal of a postconviction petition in the first stage *de novo*. *Coleman*, 183 Ill. 2d at 388-89.

#### ¶ 35A. Petitioner's Actual Innocence Claim

¶ 36 Petitioner first contends that, based on the newly discovered affidavits of Rogers, Brown, and Brandon Swain, he alleged a meritorious claim of actual innocence. We agree.

¶ 37 In order to succeed on a claim of actual innocence, a petitioner must present evidence that is newly discovered. "That means it must be evidence that was not available at a [petitioner's] trial and that he could not have discovered sooner through due diligence. The evidence must also be material and noncumulative. In addition, it must be of such conclusive character that it would probably change the result on retrial." *People v. Collier*, 387 Ill. App. 3d 630, 636 (2008) (citations omitted). "[E]vidence is not 'newly discovered' when it presents facts already known to the defendant at or prior to trial, though the sources of those facts may have been unknown, unavailable or uncooperative." *People v. Barnslater*, 373 Ill. App. 3d 512, 523 (2007). Evidence is considered cumulative only where it "adds nothing to what is already before

09-3405

the jury." *People v. Molstad*, 101 Ill. 2d 128, 135 (1984).

¶ 38 The State first contends that petitioner cannot demonstrate that this evidence was newly discovered because he knew the substance of the affidavits at the time of his trial. We disagree because there is no indication that petitioner could have discovered the evidence contained in these affidavits sooner through the exercise of due diligence. The affidavits of Rogers and Brandon Swain both indicate that they purposely chose not to come forward sooner. Rogers swore that she did not come forward because she was afraid of Cooper, who threatened her if she spoke out, while Brandon Swain indicated that he did not do so because he feared police "messaging with" him as they did to his brother, Charles. The State has cited nothing in the record which suggests that petitioner could have obtained the information in these affidavits before trial. For this reason, the State's reliance on *People v. Gillespie*, 407 Ill. App. 3d 113 (2010) is misplaced. There, the court found that the evidence submitted with the defendant's postconviction petition was not newly discovered because he was aware of the witness's identity, and their knowledge of his participation in the offense, before trial. Here, however, there is no indication that petitioner knew the identities of Rogers or Brandon Swain before trial or was aware that they witnessed the shooting. Thus, it appears that petitioner could not have obtained this information sooner. See *People v. Ortiz*, 235 Ill. 2d 319, 334 (2009) (evidence was newly discovered because the affiant could not have been known by the defendant and made himself unavailable as a witness).

¶ 39 The State next contends that the evidence contained in these affidavits is immaterial and cumulative. We disagree. "Claiming evidence is cumulative involves a determination that such evidence adds nothing to what is already before the jury." *People v. Molstad*, 101 Ill. 2d 128,

09-3405

135 (1984). Evidence that goes to "an ultimate issue in the case" will not be considered immaterial or cumulative. *Ortiz*, 235 Ill. 2d at 336; citing *Molstad*, 101 Ill. 2d at 135. For example, evidence in an affidavit that conflicts with the State's witnesses on the central issue of a case, such as the true identity of the perpetrator of a crime, is not cumulative. *Ortiz*, 235 Ill. 2d at 336 (eyewitness testimony that "supplied a first-person account of the incident that directly contradicted the prior statements of the two eyewitnesses for the prosecution" was not cumulative because "[n]o other defense witness at trial offered the evidence presented by [the affiant]"). See also *Sparks*, 393 Ill. App. 3d at 886 (finding evidence in an affidavit to be non-cumulative because the State and the defendant "presented conflicting version[s] about the incident and [the affiant] was an uninvolved witness that supported defendant's testimony").

¶ 40 Here, the evidence in the affidavits of Rogers and Brandon Swain is material because it goes to the ultimate issue in this case, namely whether or not petitioner shot and killed Brisbon. Both Rogers and Brandon Swain swore that petitioner was not the shooter, and instead indicated that it was Cooper who shot Brisbon. Moreover, this evidence is not cumulative, as the State suggests, because no witness positively identified Cooper as the shooter at trial. While Cooks testified that a tall male who was not petitioner shot the victim, neither she nor any other witness provided any testimony implicating Cooper as the shooter. The only evidence adduced at trial with respect to Cooper was that he was known to sell drugs at the intersection of the shooting, but nothing placed him at that location at the time of the shooting. While Michael Shed initially identified Cooper as the shooter in a photo array, he later changed his identification to petitioner. At trial, there was no testimony that identified Cooper as the shooter or that he was even present

09-3405

at the scene. Unlike the testimony adduced at trial, the affidavits of both Rogers and Brandon Swain place Cooper at the scene of the crime and explicitly identify him, rather than petitioner, as the shooter. Rogers goes even further in her affidavit, averring that she observed Cooper run back to his vehicle, place a gun in the trunk, and then threatened her not to tell anyone what she saw. Because no other evidence was put before petitioner's jury which suggested that Cooper was the shooter, this evidence cannot be deemed cumulative and non-material.

¶ 41 Finally, the State contends that the evidence contained in these affidavits would be insufficient to change the result upon retrial, arguing that it would have "merely impeached" the State's witnesses rather than exonerated petitioner. We cannot agree. At petitioner's trial, the State supported its version of the events through the testimony of three occurrence witnesses, of which only one, Michael Shed, stated that he witnessed the actual shooting. As stated above, Shed initially identified Cooper as the shooter from a photo array, before changing his identification to petitioner. Dawone Tucker testified that he observed petitioner with a handgun following the shooting, but did not actually see him shoot the victim and Maurice Dorsey testified that he while he witnessed the shooting, he could not identify the shooter. Two other State's witnesses, Charles Swain and Michael Anderson, recanted at trial and testified that they did not see petitioner shoot Brisbon. The evidence contained in the affidavits of Rogers and Brandon Swain, whose names did not come up during the course of trial, directly contradicts the State's theory of the events. The affidavit of Brandon Swain positively identified Cooper as the shooter, and that of Rogers, as well, indicated that Cooper was the shooter and swore that petitioner was not involved. The direct identification of Lamont Cooper as the shooter in the affidavits of two new witnesses, Rogers and Brandon Swain, coupled with the previous

eyewitness testimony of Cooks in which she said that an unknown individual other than petitioner shot the victim, and Shed's initial misidentification could well have created sufficient reasonable doubt so as to potentially change the result of petitioner's trial. The State's case is even further attenuated by its reliance on the recanted testimonies of Anderson and Charles Swain. See *Ortiz*, 235 Ill. 2d at 337 ("the evidence of defendant's innocence would be stronger when weighed against the recanted statements of the State's eyewitnesses").

¶ 42 The State notes, and we agree, that the affidavit of Brown, petitioner's third purported exonerating witness, is insufficient to support petitioner's claim of actual innocence because it contains only hearsay statements. In her affidavit, Brown merely states that she spoke to her friend, Crystal Rogers, who then told her that Lamont Cooper was the shooter. She does not, however, state that she was a witness to the shooting, but instead only echoes what she was told by Rogers. "As a general rule, hearsay affidavits are insufficient." *People v. Morales*, 339 Ill. App. 3d 554, 565 (2003). The exception to this rule, applies "only in situations where material facts which ought to appear in the affidavit are known solely to persons whose affidavit the affiant is unable to procure by reason of hostility or otherwise." *People v. Cole*, 215 Ill. App. 3d 585, 588 (1991). This exception is inapplicable here because Rogers herself has submitted an affidavit. While we accept the State's contention with respect to Brown's affidavit, it does not reduce or alter the effect to be given to the exonerating affidavits of Rogers and Brandon Swain.

¶ 43 In light of the low threshold placed upon a petitioner at the first stage of postconviction proceedings, we find that petitioner has presented sufficient evidence to support a legal theory of actual innocence based on newly discovered evidence. See *Edwards*, 197 Ill. 2d at 244. It is at

least arguable that the affidavits of Brandon Swain and Rogers, which suggest that Lamont Cooper, rather than petitioner, shot and killed Brisbon, were newly discovered, material and non-cumulative, and could have changed the result of petitioner's trial. See *Hodges*, 234 Ill. 2d at 20; *Sparks*, 393 Ill. App. 3d at 886. Accordingly, we find that petitioner has pled sufficient facts so as to avert the first stage dismissal of his *pro se* postconviction petition, and advance it to second stage proceedings under the Act where counsel is to be appointed and "the circuit court must determine whether the petition and any accompanying documentation make a substantial showing of a constitutional violation." *Edwards*, 197 Ill. 2d at 244.

¶ 44 We need not address petitioner's remaining contentions regarding the effectiveness of counsel because partial summary dismissals are not permitted at the first stage of postconviction proceedings under the Act. Upon reversal of a summary dismissal, the Act mandates that "the circuit court must docket the *entire* petition, appoint counsel, if the petitioner is so entitled, and continue the matter for further proceedings." *People v. Rivera*, 198 Ill. 2d 364, 371 (2001). See also *People v. Hodges*, 234 Ill. 2d 1, 22 (2009) ("We need not address defendant's allegation that counsel was ineffective for failing to present evidence of additional cartridge cases allegedly found at the scene. Under the Act, summary partial dismissals are not permitted at the first stage of a postconviction proceeding").

#### ¶ 45III. CONCLUSION

¶ 46 For the foregoing reasons, the trial court's dismissal of petitioner's postconviction petition is reversed and remanded for further proceedings.

¶ 47 Reversed; cause remanded.