

1-11-3548

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 03 CR 22172
	)	
LAVONDELL NOBLE,	)	Honorable
	)	Nicholas R. Ford,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CUNNINGHAM delivered the judgment of the court.  
Justices Rochford and Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant was entitled to a fingerprint records search of unidentified fingerprints in his case, where his conviction was based almost entirely on the victim's description and identifications of defendant and where none of the useable fingerprints matched defendant. Attribution of unidentified prints to a person fitting the victim's description of defendant would be materially relevant to defendant's claim of misidentification.

¶ 2 Following a 2004 bench trial in the circuit court of Cook County, defendant LaVondell Noble was convicted of aggravated kidnapping and unlawful use of a weapon by a felon (UUWF) and sentenced to concurrent prison terms of 12 and 4 years, respectively. His convictions and sentences were affirmed on direct appeal. *People v. Noble*, No. 1-05-0840 (2007) (unpublished order under Supreme Court Rule 23). We also affirmed the summary dismissal of his 2008 post-conviction petition. *People v. Noble*, No. 1-08-2840 (2009) (unpublished order under Supreme Court Rule 23). Subsequently, defendant filed a petition for forensic testing under section 116-3 of the Code of

Criminal Procedure (Code) (725 ILCS 5/116-3 (West 2010)), seeking the submission of unidentified fingerprints to the federal Integrated Automated Fingerprint Identification System (IAFIS) for a fingerprint check. The circuit court then granted the State's motion to dismiss the petition for forensic testing. Defendant now appeals from the circuit court's dismissal of the petition for forensic testing. He contends that the circuit court erred in dismissing his petition for forensic testing on the grounds that identity was not at issue at trial and that new fingerprint evidence would not be materially relevant to his claim of actual innocence. For the reasons stated below, we reverse the decision of the circuit court and remand for the requested IAFIS testing.

¶ 3 Defendant and codefendants Kelvin Everett and Melvin Pearson were charged with aggravated kidnapping and aggravated unlawful restraint for allegedly confining Jose Rojas (Rojas) while armed with a firearm for the purpose of obtaining ransom, on or about July 15, 2003. They were also charged with aggravated battery for, on the same date, allegedly causing Rojas great bodily harm by kicking and hitting him about the head and body. Defendant was charged with UUWF for allegedly possessing a firearm on the same date, having previously been convicted of felony possession of a controlled substance in an unrelated matter.

¶ 4 In opening statements at trial, defense counsel did not challenge that Rojas had been kidnapped, but argued that Rojas' identifications of defendant as one of the kidnappers were mistakes resulting from "somewhat suspect" procedures and were unsupported by physical evidence.

¶ 5 The evidence at trial showed that three men approached Rojas as he prepared to use a self-serve car wash. One of the men, codefendant Everett, announced a robbery, and Rojas told him that he could take his car. Instead, codefendant Everett forced Rojas into the back seat of his car. The men told Rojas that they would kill him if his father did not pay them. They took him to a garage where the three men and two or three other men detained Rojas for nearly 15 hours, beating him until he fled after freeing himself. Rojas immediately returned with the police to the garage, where he had been held. The arrests were made and Rojas' car was recovered.

¶ 6 Later in the day after the arrests, Rojas viewed a police lineup that did not include defendant, and identified codefendants Everette and Pearson as two of his initial abductors and a third man, Marvin Everette (Marvin), as one of the men present when he was held in the garage. However, Rojas told the police that three of his kidnappers were not in the police lineup. He described one of the absent kidnappers as a tall, bald black man with a tattoo on one of his legs of a "letter J, a heart, and a P." After questioning Marvin, the police began to suspect defendant. Later on the day of the kidnapping, Rojas viewed an array of six photographs from which he identified defendant as one of the kidnappers. Two months after the kidnapping, Rojas identified defendant in a police lineup.

¶ 7 At trial, Rojas again identified defendant as one of his abductors. He testified that defendant pointed a gun at him during the initial abduction, handcuffed him to his car in the garage, and was one of the men who struck him. Defendant was wearing gloves in the car but took them off in the garage, and Rojas saw him touching the car without wearing any gloves in the garage. The parties stipulated that police found 22 fingerprints on Rojas' car, and that the Illinois State Police Crime Laboratory (the crime laboratory) found many of the fingerprints suitable for comparison matched Rojas while the remaining suitable fingerprints were compared to, but did not match, either Rojas or defendant. As part of the State's case-in-chief, defendant was asked to remove his trousers in order to give the court an opportunity to view a leg tattoo bearing a star and crescent moon—which was not the tattoo described by Rojas. After the State rested, the trial court granted a directed finding on the aggravated battery charge and dismissed the count against defendant.

¶ 8 During closing arguments, defense counsel challenged in detail Rojas' description and identifications of defendant. The trial court found defendant guilty of aggravated kidnapping, and UUWF. The court acknowledged that Rojas' description of defendant was general, stating that his description of the leg tattoo could be argued as either inculpatory or exculpatory. However, the court found that his identifications were certain and based on ample opportunity to view his kidnappers. The court denied defendant's post-trial motion, which raised the same misidentification argument,

and sentenced him to concurrent prison terms of 12 years for aggravated kidnapping and 4 years for UUWF.<sup>1</sup>

¶ 9 On direct appeal, defendant contended that there was insufficient evidence to convict him. He also contended that trial counsel was ineffective for failing to (1) move to suppress Rojas' identification of defendant; (2) move to suppress firearm-related evidence; (3) interview Rojas or his father regarding the ransom and any ransom demands; (4) employ a forensic expert to explain the likelihood of defendant's fingerprints not appearing on any of the tested items; or (5) object to alleged misrepresentations of the evidence by the State. In resolving the appeal, this court noted that regarding the fingerprint expert claim, "there were no fingerprint matches to defendant so it is unclear what defendant would expect the expert to establish since, if anything, the evidence was exonerating." *Noble*, No. 1-05-0840, at 15.

¶ 10 In his unsuccessful 2008 *pro se* post-conviction petition, defendant raised various claims of ineffective assistance of trial counsel. In relevant part, he claimed that (1) counsel's stipulation to the fingerprint evidence deprived the trial court of the opportunity to understand the significance of the failure to find the defendant's fingerprints at the scene; and (2) while counsel stipulated that Rojas' fingerprints were present, and that the remaining fingerprints were not attributable to either defendant or Rojas, counsel failed to elicit evidence of whether these fingerprints matched those of other alleged accomplices.

¶ 11 In April 2011, defendant filed the instant petition in the circuit court, for forensic testing of the fingerprint evidence that was stipulated at trial to have been compared only to defendant and Rojas. He argued that identity was at issue in his trial; the fingerprints had been returned to the crime laboratory; and "[c]omparison of the fingerprints with the database of fingerprints will significantly advance defendant's claim of actual innocence." He therefore sought submission of the

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<sup>1</sup>In pronouncing defendant's sentence, the trial court erroneously stated that he was convicted of "aggravated unlawful use of a weapon," rather than UUWF.

fingerprints to IAFIS for identification. Attached to the petition for forensic testing was a copy of a 2004 report from the crime laboratory to the police, stating that it had received 22 fingerprints that were taken from Rojas' car, along with sample fingerprints from defendant and Rojas; that an unspecified number of the recovered fingerprints were suitable for comparison; that the suitable fingerprints did not match defendant; and that the "evidence will be returned to" the crime laboratory.

¶ 12 The State moved to dismiss the petition for forensic testing, arguing that matching the unidentified fingerprints to another person would not exonerate defendant because Rojas was kidnapped before he could wash his car, and thus, a person whose fingerprints match the yet unidentified fingerprints could have touched the car well before the kidnapping.

¶ 13 Defendant responded to the motion to dismiss, noting that section 116-3 of the Code expressly provides that complete exoneration is not a prerequisite to new forensic testing and arguing that his case would be advanced if new fingerprint testing identified a person who resembled him.

¶ 14 On November 2, 2011, the parties argued the motion to dismiss the instant petition for forensic testing. The State did not dispute the chain of custody, but argued that the identification evidence "was not close" and the fingerprint evidence had been neither inculpatory nor exculpatory. The court granted the State's motion, finding that "identity is not an issue" and that a fingerprint identification would not exonerate defendant. This timely appeal followed.

¶ 15 On appeal, defendant contends that the circuit court erred in denying his petition for forensic testing under section 116-3 of the Code. He contends that, contrary to the circuit court's findings, identity was at issue at trial and the requested fingerprint comparison could materially advance his claim of actual innocence.

¶ 16 Section 116-3 of the Code provides that a defendant may make a motion in the circuit court for fingerprint testing, including comparison "to those of the defendant, to those of other forensic evidence, and to those maintained under subsection (f) of Section 5-4-3 of the Unified Code of Corrections, on evidence that was secured in relation to the trial" at which he was convicted, if the

evidence "was not subject to the testing which is now requested at the time of trial; or \*\*\* although previously subjected to testing, can be subjected to additional testing utilizing a method that was not scientifically available at the time of trial that provides a reasonable likelihood of more probative results." 725 ILCS 5/116-3(a), citing 730 ILCS 5/5-4-3(f) (West 2010).

¶ 17 The defendant must present a *prima facie* case that identity was the issue in his trial and that the evidence to be tested has been subject to a sufficient chain of custody. 725 ILCS 5/116-3(b) (West 2010). An allegation that the evidence to be tested had been in the continuous possession of the police or some other State agency is facially sufficient regarding the chain-of-custody requirement, and a defendant cannot be expected to prove at the outset a proper chain of custody because the evidence at issue will typically have been within the State's possession. *People v. Bailey*, 386 Ill. App. 3d 68, 75 (2008).

¶ 18 The circuit court must also determine that "the result of the testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence even though the results may not completely exonerate the defendant." 725 ILCS 5/116-3(c) (West 2010). Evidence is materially relevant to a claim of actual innocence if it tends to significantly advance the claim even if it does not by itself exonerate the defendant. *People v. Rozo*, 2012 IL App (2d) 100308, ¶ 4. Whether evidence would be materially relevant requires an evaluation of the trial evidence and the evidence that the defendant seeks to acquire through the testing. *Id.* at ¶¶ 4, 11. "However, the strength of the State's evidence is not a hurdle that the defendant must overcome to meet the requirements of the statute." *Id.* at ¶ 11.

¶ 19 Because the circuit court's decision on a section 116-3 petition for forensic testing is based on its assessment of the pleadings and trial transcripts rather than the credibility of any witnesses, we review the dismissal or denial of such a petition on a *de novo* basis. *Id.* at ¶ 4.

¶ 20 Here, the parties do not dispute that the fingerprints were not subjected to the IAFIS testing, which is now requested by defendant; that identity was at issue at trial; and that a chain of custody

was maintained. We agree with the defendant that his petition for forensic testing and supporting documentation made a *prima facie* case as to the absence of an earlier IAFIS search and as to the sufficient chain of custody of the evidence. With regard to whether identity was an issue at trial, defendant did not dispute at trial that Rojas had been kidnapped. Instead, his arguments and evidence challenged Rojas' identification of defendant as one of the kidnappers.

¶ 21 As a threshold matter, the State questions whether there is in fact unidentified fingerprint evidence, noting the recovery of 22 fingerprints and the crime laboratory's reference that many of the fingerprints matched Rojas. In particular, the State argues that defendant is jumping to conclusions from the crime laboratory report's reference to the "remaining suitable latent impressions" that match neither Rojas nor defendant, as an indication that fingerprints existed that had not yet been identified. However, we find that it is eminently reasonable to conclude from that phrase—and the full laboratory report that there *were* useable fingerprints that matched Rojas and other useable fingerprints that *did not* match Rojas or defendant—that there are indeed unidentified fingerprints in the body of evidence available in this case.

¶ 22 The parties also dispute whether an IAFIS search of the unidentified fingerprints has the potential to reveal evidence materially relevant to defendant's claim of actual innocence. The record discloses that aside from the evidence that the police came to suspect defendant based on their questioning of Marvin – which was not supported by Marvin's testimony—defendant's conviction was based entirely upon the description and identifications by Rojas. Defendant's theory is that if the IAFIS search matched one or more of the unidentified fingerprints to a tall, bald black man, as described by Rojas, his identifications of defendant would be placed into question. We note that defendant's theory in this case would be weakened if the man found by such a search did not have a leg tattoo bearing some resemblance to the one described by Rojas, and conversely strengthened if he had such a tattoo. Nonetheless, there is a potential that the outcome of the requested IAFIS fingerprint search would be materially relevant to defendant's claim of actual innocence. When

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viewed against the totality of circumstances and all of the evidence in this case, we believe justice is best served by allowing the requested IAFIS testing.

¶ 23 Accordingly, the judgment of the circuit court is reversed and this cause is remanded for the court to issue an order regarding the IAFIS search as requested by defendant in his petition for forensic testing. See ILCS 5/116-3(d) (West 2010) ("[i]f evidence previously tested pursuant to [section 116-3] reveals an unknown fingerprint from the crime scene that does not match the defendant or the victim, \*\*\* the [c]ourt shall direct the prosecuting authority to request the Illinois State Police Bureau of Forensic Science to submit the unknown fingerprint evidence to the FBI's [IAFIS] for identification").

¶ 24 Reversed and remanded with directions.