

2012 IL App (2d) 111226-U
No. 2-11-1226
Order filed December 3, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 95-CF-1009
)	
)	
PAUL G. NEWKIRK,)	Honorable
)	Mark L. Levitt,
Defendant-Appellant.)	Judges, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's denial of defendant's postconviction petition was not manifestly erroneous where the record supported the trial court's finding that the recanting witnesses' postconviction hearing testimony was not credible.

¶ 2 Defendant, Paul G. Newkirk, appeals from the denying of his successive postconviction petition based on newly discovered evidence. Defendant argued that the recanted testimony of the victims established that he was actually innocent of the crimes for which he had been convicted. The trial court denied his petition after conducting an evidentiary hearing. On appeal, defendant argues

that: (1) the trial court improperly considered that defendant did not allege and did not establish that the State knowingly used perjured testimony; (2) he may make a free-standing claim of actual innocence based on the recantation testimony as newly discovered evidence regardless of whether the State knowingly used perjured testimony; (3) the trial court committed manifest error by denying defendant relief pursuant to his successive petition because the evidence presented by defendant in the form of recantation evidence was wholly uncontroverted by the State's witnesses; (4) the trial court committed manifest error by finding the recanting witnesses "completely incredible" because it considered and relied on the original trial court's finding of reliability and trustworthiness after a hearing pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10 (West 1994)), equated the original trial court's finding of reliability with credibility, and considered and relied on the jury's verdict of guilty; (5) the trial court committed manifest error by finding the recanting witnesses completely incredible, particularly finding that it was so "matter-of-fact" and "so without emotion" that it could not possibly be true; and (6) the trial court erred by rejecting the recanting witnesses' testimony because the trial court failed to consider the extraordinary circumstances in defendant's case. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In 1995, following a jury trial before Judge Victoria A. Rossetti, defendant was found guilty of six counts of aggravated criminal sexual assault (720 ILCS 5/12-14(b)(1) (West 1994)) and two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 1994)) and was sentenced to a total of 42 years' imprisonment. Two alleged victims testified at defendant's trial; Rashon Flemings, now known as Rashon Kanous, and Jeremiah Flemings, now known as Jeremiah Kanous, ages nine and ten at the time of trial, respectively. Defendant's mother, Mary, had adopted

Rashon and Jeremiah and, when Mary died, defendant became their custodian. At defendant's trial, Rashon and Jeremiah testified that defendant had repeatedly sexually abused them.

¶ 5 On direct appeal, Defendant argued that the trial court failed to follow the proper procedures during his pretrial fitness hearing; the trial court erred by denying his motion to separate the trials for the alleged separate offenses against the two victims; and he was denied effective assistance of counsel because defense counsel failed to adequately disclose that one of the victims had attention deficit disorder and failed to cross-examine both victims regarding inconsistent statement they made to police officers. We affirmed the trial court's judgment. *People v. Newkirk*, No. 2-97-0702, (Aug. 13, 1998) (unpublished order under Supreme Court Rule 23). Defendant petitioned for leave to appeal our decision, but was denied by the Illinois Supreme Court on June 11, 1998. See *People v. Newkirk*, 296 Ill. App. 3d 1077 (1998) (Table).

¶ 6 On June 4, 1999, defendant filed a *pro se* postconviction petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 1998)), asserting that the trial court did not consider certain sentencing factors and that defendant was denied effective assistance of counsel. After reviewing defendant's petition, the trial court found that defendant's claims could have been raised on direct appeal and were without merit. Thus, on July 13, 1999, the trial court summarily dismissed defendant's petition.

¶ 7 On January 3, 2000, defendant filed a second *pro se* postconviction petition with exhibits challenging the constitutionality of the sentencing statute. After reviewing defendant's petition and exhibits, the common law record, and transcripts of the proceedings in the trial court, the trial court dismissed the petition as frivolous and patently without merit on March 20, 2000.

¶ 8 On August 24, 2010, defendant filed a motion for leave to file a successive petition for postconviction relief. The trial court granted leave. On November 23, 2010, defendant filed his successive petition for postconviction relief pursuant to the Act. Defendant alleged newly discovered evidence of actual innocence due to the recantation of the testimony of Rashon and Jeremiah, the only two victims of the crimes for which defendant was convicted. The bases of defendant's petition was that Rashon Kanous and Jeremiah Kanous testified falsely due to coercion, intimidation and false promises made by police officers. The affidavits of Rashon and Jeremiah were attached to defendant's petition.

¶ 9 At the postconviction hearing, before Judge Mark L. Levitt, Rashon testified as follows. In January 1995, his adoptive mother had died a few years earlier and he and his brother, Jeremiah, had been living with their adoptive brother, defendant. In the evening of January 7, 1995, Rashon heard "rumbling and tussling" and "humping" noises coming from defendant's bedroom. Defendant's door was closed and defendant was screaming. Rashon was frightened. He went back to his bedroom where he and Jeremiah huddled together. In the morning, defendant was beaten up, tied up, naked, and lying on his bedroom floor, and "blood was everywhere." Rashon and Jeremiah went across the street and told their neighbor, Mrs. Hicks, what had happened. Mrs. Hicks came with the boys back to their house and they called the police. The police arrived, took the boys to McDonald's to eat and then to the police station where Rashon was placed in a different room from Jeremiah.

¶ 10 Rashon also testified as follows. Detective Brian Hanna asked Rashon if he knew how defendant was beaten up. Rashon told the detective that he had heard humping noises and had heard defendant screaming and being beaten. When the detective asked if Rashon knew what humping meant, Rashon replied, "it's when two guys get together and they do stuff to each other." At that

point Hanna asked if defendant ever touched Rashon and Rashon said “no.” Rashon testified that Hanna said, “we know [defendant] is a gay man and we know he is touching on [*sic*] you and your brother.” Rashon replied, “no, he is not.” Hanna told Rashon that if he told him “the truth” he could go home. Rashon wanted to go home. Hanna spoke to Rashon for “a couple of hours.” During this time, Rashon changed his answer regarding whether defendant touched him sexually. Hanna told Rashon, “we want to put [defendant] away. He’s a bad guy. We know he’s touching you guys, and you are not going to go home until you tell the truth.” During the postconviction hearing, Rashon was asked, “Did you have any understanding what was meant by the truth?” Rashon replied, “Not really, I know the truth was that [defendant] did not touch me and my brother, and that is the truth.”

¶ 11 Rashon continued to testify as follows. Rashon and Jeremiah were placed alone in the same room for a while. Jeremiah said that he was standing by defendant and had refused to tell the police that defendant had touched him sexually. Rashon told Jeremiah to “just go along with it.” Rashon testified as follows:

“I was scared, man, not only for me and my brother but for [defendant]. I was scared seeing [defendant] on the ground like that. I didn’t know what to do. I thought I would never see him again. So when they told me—when they told me[,] we know [defendant] is touching you and you want to go home, just tell us the truth, they just couldn’t accept that a gay man was raising two black boys, man.”

Rashon testified that, eventually, Jeremiah “went along with it.” Jeremiah did not say much but he agreed with everything that Rashon said. Rashon and Jeremiah did not leave the police station until it was dark outside.

¶ 12 Rashon also testified as follows. A few weeks later he was interviewed by police officer Mike Leusch at a child advocacy center. Leusch asked Rashon if defendant ever put his penis in Rashon's "butt" or mouth, or whether Rashon had touched him sexually. Rashon told Leusch, "no." Leusch told Rashon that he knew what defendant had done to him and his brother and he needed to tell the truth. Rashon believed "telling the truth" meant that Leusch wanted him to say that defendant was touching him and his brother even though Rashon knew that did not happen. Rashon then told Leusch that defendant had put his penis in Rashon's mouth, even though Rashon knew it was untrue. Rashon told Leusch it was true because Rashon wanted to go home. Leusch had told Rashon that if Rashon told him what happened, "we get to go home, and I was scared. I was nine years old. I was a kid. I was scared and I didn't want to be separated from my brother." Rashon testified, "Later, I told Jeremiah to just go along with the story so we could go home. At first he said "no" but then he said, " 'okay, bro.' "

¶ 13 Rashon also testified as follows. Rashon told Assistant State's Attorney Elliot Pinsel, before defendant's trial, that defendant "didn't do it." Pinsel was unhappy with what Rashon had told him, and said that Rashon was "going against his word," that defendant was a bad guy and they wanted to put defendant away. When Pinsel asked Rashon if he knew the difference between the truth and a lie Rashon replied, " 'Yes.' "

¶ 14 Rashon continued his testimony at the postconviction hearing as follows. Defendant never touched Rashon's penis, put his penis in Rashon's mouth, put his penis in Rashon's anus, put Rashon's penis in his anus or touched Rashon in the shower, and Rashon never saw defendant touch Jeremiah's penis or perform any sexual acts with Jeremiah. No one offered any promises to Rashon to induce him to lie, except they "promised" we would have a "safe home and me and Jeremiah

wouldn't be split up." Rashon testified that he lied when he testified at defendant's trial that defendant sexually molested him.

¶ 15 Rashon also testified as follows. He "broke down one day" and told his adoptive father, Mark Kanous, that "this was not true." Rashon began living with Kanous in 1996. The only other person he told was his "[adoptive] momma" because:

"I was scared. I just lied. I am thinking I will go to jail, you know, but I had to let this be known, man. He has been in jail; this time he has to get out, because he didn't do something. He didn't do this crime and he didn't do it and he's innocent."

Rashon felt "depressed [and] distressed," as a result of his false testimony. He did not come forward earlier because he was scared of going to jail.

¶ 16 Jeremiah testified at the postconviction hearing as follows. On the morning of January 8, 1995, he and his brother found defendant beaten, tied up and covered in blood on the floor of defendant's bedroom. Jeremiah and his brother went across the street to get help and, after stopping at McDonald's, they were soon taken to the police station. Jeremiah was placed in a room separate from his brother and questioned by detective Hanna. Hanna repeatedly asked Jeremiah whether defendant had placed his penis in Jeremiah's or Rashon's mouth or anus. Jeremiah responded, "No, no, no." Jeremiah was told that Rashon had admitted to "these things" and Jeremiah was "in disbelief." Jeremiah testified: "I was like, let me hear it out of his mouth." When Jeremiah met with Rashon, he told Rashon that he would not go along with the story. Rashon asked Jeremiah to lie. Jeremiah changed his story for Rashon's sake, so that Rashon would not get in trouble for lying to the police. Also, "[w]e just wanted to go home" and not be separated. Jeremiah was nine years old at the time. He felt helpless after seeing defendant beaten up; defendant was their caretaker, their

brother. “We didn’t know what to do. It was frightening, very, very frightening.” One of the detectives repeatedly told us, ““We are going to make sure you guys are never going to be apart.”” When questioned again on several other occasions by the police, Jeremiah continued with the story that defendant sexually assaulted him.

¶ 17 Jeremiah also testified as follows. Defendant never placed his penis in Jeremiah’s mouth or anus, and Jeremiah never placed his penis in defendant’s mouth or anus. Jeremiah did not see any sexual behavior between Rashon and defendant.

¶ 18 Jeremiah continued his testimony at defendant’s postconviction hearing as follows. Jeremiah told Kanous that he had lied about the allegations against defendant. Jeremiah had told several other people throughout his life that the allegations he had made against defendant were false, including Dr. Karen Chantry, a lake County psychological services employee. Jeremiah told Dr. Chantry that his testimony had been false during a sexual offender evaluation in 2006. Jeremiah testified that he had lied about the allegations against defendant and that defendant is innocent. Jeremiah was bothered by his lies, “every night I went to bed, every Christmas, every holiday, every act in life, every time I went off to college, I graduated. Yes, every night. *** I thought about this man sitting in jail and knowing how they treat child molesters in jail.” Jeremiah also testified that he “wasn’t going to come clean unless Rashon was going to come clean. Simple as that.”

¶ 19 Mark Kanous testified as follows. Three or four years after he had adopted Rashon and Jeremiah in 1996, both boys came to Kanous and Rashon told Kanous that “They had a secret.” But they were “beating around the bush.” The boys told Kanous that they were afraid of telling the truth because they thought Kanous would “take them back to DCFS.” Kanous assured them that they “are not going anywhere.” Eventually, the boys told Kanous that they had lied during defendant’s trial.

They told Kanous that “we were told if we tell that [defendant] touched us we could go home during the trial.” Kanous testified that he did nothing with the information that he had learned; he did not go to the police department or contact his son’s attorneys.

¶ 20 Retired Waukegan police detective Brian Hanna testified as follows. He came in contact with Rashon and Jeremiah on January 8, 1996, because they were potential witnesses in the investigation of the battery of defendant. Rashon told Hanna that defendant was gay, defendant had “lots of people come over to the house” and Rashon “saw a male, black humping [defendant].” Based on those comments, Hanna asked Rashon “if anyone ever touched him anywhere they weren’t supposed to.” Rashon replied that defendant “had touched his privates.” Rashon told Hanna this 30 or 40 minutes into the interview. Rashon told Hanna that, the last time defendant touched him, he “asked [Rashon] to pull [defendant’s] pants down, and [Rashon] had touched [defendant’s] dick and it got hard.” Rashon also told Hanna that defendant came into the shower and touched his “dick.” As Rashon spoke to Hanna about defendant touching him, he cried. Hanna did not make any threats or promises to Rashon regarding his statements and did not tell Rashon that he and Jeremiah could go home if he told Hanna what defendant had done. Rashon never told Hanna that he was not touched by defendant.

¶ 21 Hanna also testified as follows. After Hanna spoke with Rashon, he spoke with Jeremiah in a different room. Hanna asked Jeremiah “if anybody had touched him anywhere they weren’t supposed to.” Jeremiah told Hanna that defendant “touched his dick” about three years earlier. Jeremiah also told Hanna that when Jeremiah would take a shower, defendant would come in and put his hand on Jeremiah’s “dick.” Hanna testified that he did not make any threats to Jeremiah or

make any promises that he and Rashon would be kept together to induce Jeremiah to give a statement about defendant.

¶ 22 Officer Michael Leusch testified as follows. He has been employed by the Waukegan Police Department for 24 years. He was assigned to the child advocacy center between 1991 and 1996 and was trained to interview child victims of sexual abuse. Leusch interviewed Rashon and Jeremiah separately on January 30, 1995. The purpose of the interviews was to determine whether a crime had been committed. At the time of the interview, Leusch was not aware of defendant's background other than he had been the victim of an assault. Leusch did not threaten Rashon or make any promises to induce them to say anything about defendant. Specifically, Leusch did not promise the boys that they would be able to stay together or would not be able to go home based on whether they talked about defendant.

¶ 23 Leusch also testified as follows. Leusch also interviewed Rashon and Jeremiah separately, and then together, on February 6, 1995. While interviewing Rashon alone, Rashon said that he saw defendant put his penis into Jeremiah's mouth. Jeremiah, while being interviewed separately, at first denied that defendant had done this. When Rashon was brought into the room with Jeremiah, Jeremiah said that he did not tell Leusch all the information the first time because he was embarrassed. Jeremiah then "admitted that defendant did put his penis" in Jeremiah's mouth two or three times. On cross-examination, Leusch testified that he did not have an independent recollection of many of the details of the interviews.

¶ 24 Elliot Pinsel, a Lake County assistant state's attorney at the time of defendant's investigation and prosecution, testified during defendant's postconviction hearing as follows. He met with Rashon and Jeremiah a number of times prior to defendant's trial. He took the boys out a few times because

no one had visited the boys at the facility where they were staying. Pinsel was “stunned” by the condition of the facility where the boys had been placed. Pinsel and the boys did not discuss the case, and Pinsel never told the boys what to say and never promised them anything regarding their testimony. However, after reviewing Leusch’s police report during the postconviction hearing, Pinsel testified that it appeared that he had asked Leusch to re-interview Rashon due to an inconsistency. Pinsel did not recall what the inconsistency was. Pinsel testified at the postconviction hearing that the boys testified in front of a jury consistently with the statements they gave to the police.

¶ 25 Doctor Chantry testified as follows. Pursuant to a court ordered sexual offender evaluation, she interviewed Jeremiah in June 2006, when he was 22 years old, while he was incarcerated at the Lake County Jail. Jeremiah told Dr. Chantry that he had lived with defendant when he was eight or nine years old. Jeremiah told Dr. Chantry that in January 1995 he and Rashon were interviewed at the Waukegan Police Station. The police wanted Jeremiah and Rashon to say that defendant molested them. Jeremiah said that he and Rashon told the police that defendant had molested them even though it was not true. Jeremiah said that he had never been sexually abused. Jeremiah said, “I was tired of being teased” about living with a “faggot.” Jeremiah also told Dr. Chantry that he had learned that his adoptive mother willed a house to defendant, Rashon and Jeremiah, that the house was being sold, and Jeremiah “wanted his share of the money.” Jeremiah also said that both his adoptive mother and defendant had physically abused him. Jeremiah told Dr. Chantry that Rashon continued to say that defendant did molest him.

¶ 26 Following an evidentiary hearing, the trial court, Judge Levitt, presiding, denied defendant’s request for relief. The trial court stated, in part:

“The matter comes [before me] for ruling following what I would characterize as rather extensive hearings.

* * *

The sum and substance of the testimony that the Court has heard is that although [Rashon and Jeremiah] made statements implicating [defendant’s] various acts of sexual assault and sexual abuse that the acts complained of actually did not happen. The question before the Court is a question that [the] Court has to determine is [*sic*] whether or not those subsequent recantations are sufficient to merit relief under the Post-Conviction Act.

* * *

With regard to the allegations that there were subsequent recantations that were not available to counsel for the defendant at the earlier hearing, [I] would note that[,] as [an] initial matter[,] that when questions of perjury and credibility of witnesses in a post-trial recantation are raised in a post-conviction petition, the trial court here[,] not being the same trial court as originally was involved in the trial of the defendant[,] did conduct a full evidentiary hearing credibility and the reliability of the statements made by Rashon and Jeremiah Kanous.

* * *

I would say Jeremiah and Rashon each of them testified rather clearly and matter of factly about matters that they say were very fresh in their minds notwithstanding the fact they happened in 1991 through 1995. Their testimony was remarkable to me in that it was so matter-of-fact and so without emotion that it strained my belief [that] they were testifying in any way credibly[,] that what they were testifying to was in some way true.

There is a reason why recantation testimony is regarded as inherently [un]reliable and I think it was abundantly shown during the course of these proceedings. Both witnesses testified at trial. Both witnesses testified in these proceedings. I find their testimony after reviewing it and after reviewing the pleadings, after listening to all of the evidence, arguments of counsel, after observing both the manner and demeanor of the witnesses[,] I find that their testimony in this regard is completely incredible and certainly not subject to any relief under the Act.”

The trial court denied defendant’s successive postconviction petition. Defendant filed a timely appeal.

¶ 27

II. ANALYSIS

¶ 28 On appeal, defendant argues that the trial court improperly considered that defendant did not allege and did not establish that the State knowingly used perjured testimony. Defendant argues that, based on a claim of actual innocence due to newly discovered evidence, he is entitled to a new trial pursuant to the Act. Defendant’s newly discovered evidence is the recantation of the trial testimony of Rashon and Jeremiah.

¶ 29 At a third-stage evidentiary hearing, the defendant bears the burden of making a substantial showing of a constitutional violation. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). Recantation evidence, standing alone, does not rise to the level of a constitutional violation that would entitle a convicted person to postconviction relief. *People v. Brown*, 169 Ill. 2d 94, 106 (1995). In *Brown*, our supreme court reasoned:

“In the absence of an allegation of the knowing use of false testimony, or at least some lack of diligence on the part of the State, there [is] no involvement by the State in the false

testimony to establish a violation of due process. [Citation.] Without such involvement, the action of a witness falsely testifying is an action of a private individual for which there is no remedy under the due process clause.” *Id.* at 106.

¶ 30 In this case, the trial court stated that defendant did not allege that the State knowingly used perjured testimony, and the trial court found that there was no misconduct by the State or police in knowingly using perjured testimony. Defendant does not contest this. Further, the trial court, having found the testimony incredible, effectively determined that the original trial testimony was truthful. Thus, it could not be perjured and could not be the basis of a constitutional violation. Accordingly, defendant failed to establish any due process violation, and he is not entitled to relief based on Rashon’s and Jeremiah’s postconviction testimony that, years earlier, they lied at defendant’s trial. See *People v. Jones*, 2012 IL App (1st) 093180, ¶ 63.

¶ 31 Defendant also argues that he may make a free-standing claim of actual innocence based on the recantation testimony as newly discovered evidence regardless of whether the State knowingly used perjured testimony. Even if defendant is correct, to be granted relief on the basis of newly discovered evidence defendant must establish that such evidence is new, material, noncumulative and so conclusive that it would probably change the result at trial. See *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009). Further, for newly discovered evidence, in the form of new testimony, to be so conclusive that it would probably change the result at trial, it must be credible. *People v. Gonzalez*, 407 Ill. App. 3d 1026, 1033-35 (2011). If it is not credible, it will not warrant a new trial. *Id.*

¶ 32 Defendant argues that the trial court committed manifest error by denying defendant relief pursuant to his successive petition because the evidence presented by defendant in the form of recantation evidence was wholly uncontroverted by the State’s witnesses.

¶ 33 A trial court's ruling on a postconviction petition following an evidentiary hearing is entitled to substantial deference. *People v. Scott*, 194 Ill. 2d 268, 276 (2000). Where, as here, pursuant to the Act, a trial court conducts an evidentiary hearing, considers new evidence, and considers the credibility of the witnesses, the trial court's decision will be affirmed unless it is manifestly erroneous. *People v. Morgan*, 212 Ill. 2d 148, 155 (2004). A trial court commits a manifest error only when the error is clear, plain, evident and indisputable. *Ortiz*, 235 Ill. 2d at 333. Further, it is well established that a witness's recantation of his prior testimony is viewed as inherently unreliable (*Morgan*, 212 Ill. 2d at 155), particularly where the recantation involves a confession of perjury (*People v. Steidl*, 142 Ill. 2d 204, 254 (1991)).

¶ 34 In this case, the record supports the trial court's decision to deny defendant's successive postconviction petition. Contrary to defendant's assertion, the State presented evidence that contradicted Rashon's and Jeremiah's testimony. Rashon and Jeremiah testified that, while being interviewed by Hanna, they initially denied that defendant had sexually molested them. Rashon and Jeremiah testified that they changed their stories due to Hanna's threats and promises, and Jeremiah reluctantly changed his story only after Jeremiah met with Rashon. However, Hanna's testimony contradicted significant portions of Rashon's and Jeremiah's recantation testimony. Hanna testified that Rashon and Jeremiah told Hanna during their initial interviews, that defendant had sexually molested them. Further, contrary to the boys' recantation testimony, Hanna denied that he promised Rashon or Jeremiah that they could stay together or that he threatened to separate the boys if they refused to say that defendant has sexually molested them. Further, Hanna's testimony contradicted Rashon's and Jeremiah's testimony that Jeremiah changed his story only after meeting with Rashon. In addition, Hanna testified that Rashon never denied that defendant molested him. Further, Hanna

testified that while interviewing each boy separately, they both told a similar story; that defendant touched their penises while they were in the shower. Thus, Rashon's and Jeremiah's recantation evidence was controverted by Hanna's testimony. Further, Dr. Chantry testified that Jeremiah told her in June 2006 that Rashon continued to say that defendant molested him. Thus, contrary to defendant's contention, Rashon's and Jeremiah's recantation testimony was controverted.

¶ 35 Next, defendant argues that the trial court committed manifest error in finding the recanting witnesses "completely incredible" because it considered and relied on the original trial court's finding of reliability and trustworthiness after a hearing pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10 (West 1994)), equated the original trial court's finding of reliability with credibility, and considered and relied on the jury's verdict of guilty. Defendant complains of the following statements made by the trial court:

"In fact, what I note is that during the course of the earlier trial and proceedings in advance of trial that [there were] not only inconsistencies in the minor boys' statements made available to the attorneys for the defendant, those were actually tested in court and the Court made determinations on their admissibility pursuant to hearings conduct[ed] under Chapter 115-10. The Court made determinations that their statements were reliable and trustworthy [and] allowed their admissibility into evidence at the trial.

* * *

"It's worth noting that the abuse that was complained of occurred over approximately over a four[-]year period, 1991 through 1995, when these children were of a very tender age. The statements concerning [the] conduct of [defendant]. Those statements were tested in the adversarial proceedings that were available to [defendant] at the time. There being findings[.]

as I stated[,] by the trial court[,] that they were admissible and reliable and thereafter they were tested during the course of the jury trial and the jury subsequently returned verdicts convicting [defendants].”

Here[,] at this point[,] I should note that since [defendant’s] claim turns on what he characterizes as this newly discovered evidence it’s certainly important that I express that over the course of these several dates of hearing that I was able to observe the individuals testify, all of the individuals testify, their manner and demeanor was remarkable in several respects.”

The trial court then noted that recantation testimony is “inherently unreliable” and stated that it had also considered defendant’s petition. The trial court found that Rashon’s and Jeremiah’s testimony “is completely incredible and certainly not subject to any relief under the Act.”

¶ 36 Thus, when the trial court’s statement regarding the 115-10 hearing and the jury’s guilty verdict is taken in context, there is no indication that the trial court considered or relied upon the original trial court’s finding of trustworthiness, reliability or credibility. Rather, to determine Rashon’s and Jeremiah’s credibility, the trial court considered the witnesses’ testimony and demeanor, and defendant’s pleadings, when it made its finding of lack of credibility.

¶ 37 To support his argument that the trial court should have only considered the evidence that was presented at the postconviction hearing, defendant cites *People v. King*, 316 Ill. App. 3d 901 (2000), *People v. Hernandez*, 298 Ill. App. 3d 36 (1998), and *People v. Lester*, 261 Ill. App. 3d 1075 (1994). However, nothing in these cases indicates that a court must ignore the proceedings at trial. In fact, in *Hernandez*, a case involving recantation testimony, the appellate court invited the trial court, on remand, to consider the witness’s trial testimony in order to make a credibility

determination. *Hernandez*, 298 Ill. App. 3d at 41. Thus, *King*, *Hernandez* and *Lester* do not support defendant's argument. We also note that, when considering the credibility of a recanting witness during a postconviction hearing, a trial court may study the record. See *Morgan*, 212 Ill. 2d at 165. See also *People v. Steidl*, 142 Ill. 2d 204, 254 (1991), quoting *People v. Marquis*, 344 Ill. 261, 265 (1931) (stating that a jury's guilty verdict warrants the presumption that a witness's trial testimony was truthful).

¶ 38 In addition, defendant argues that the trial court committed manifest error by finding Rashon's and Jeremiah's testimony to be completely incredible, particularly finding that it was so "matter-of-fact" and "so without emotion" that it could not possibly be true. Defendant notes that both Rashon and Jeremiah testified that they daily suffered an incredible amount of guilt, knowing that they testified falsely at defendant's trial. Defendant also notes that Rashon testified he experienced breakdowns and was very depressed and distressed. Rashon also testified that he had matured since the trial. Jeremiah testified that when he went to bed each night he thought about defendant sitting in jail. Jeremiah also testified that now he was safe and had seen what life was about and he never wanted to be a liar. Defendant argues that the trial court mistook Rashon's and Jeremiah's clarity and articulateness that was achieved through maturity, growth and years of reflection to mean that they were not credible.

¶ 39 Ultimately, in this case, as in every case of this kind, it was for the trial court to assess the credibility of the recantation testimony after having observed the demeanor of the witnesses. See *Morgan*, 212 Ill. 2d at 165. The trial court's determination was based on several factors and not solely on the unemotional and "matter-of-fact" manner in which Rashon and Jeremiah testified. In determining their credibility and whether to grant defendant's petition, the trial judge properly

studied the record, including defendant's petition; listened to all of the testimony, including Rashon's and Jeremiah's recantation testimony; and watched how they reacted when questioned and cross-examined. As we stated previously, Hanna directly controverted Rashon's and Jeremiah's recantation testimony. We also note that neither Rashon's nor Jeremiah's affidavit, attached to defendant's petition, included their alleged admission to Kanous that they had lied. Based on our examination of the record, we cannot say that the trial court's decision to reject Rashon's and Jeremiah's recantation testimony was manifestly erroneous.

¶ 40 Next, defendant argues that the trial court committed manifest error by finding Rashon and Jeremiah to be completely incredible because the trial court failed to consider the testimony of Kanous and Dr. Chantry. The record does not support defendant's argument. The trial court stated that it had observed all of the witnesses testify. Thus, the record directly refutes defendant's arguments that the trial court did not consider the testimony of Kanous or Dr. Chantry.

¶ 41 Lastly, defendant argues that the trial court erred by rejecting Rashon's and Jeremiah's testimony because the trial court failed to consider the extraordinary circumstances in defendant's case. Specifically, defendant argues that there was no physical evidence that linked defendant to the crimes against either Rashon or Jeremiah and that the evidence against defendant was comprised solely of statements made by now recanting witnesses. Defendant also notes that Rashon and Jeremiah were of tender ages when they testified against defendant, and, when they were interviewed by the police, they had been traumatized by hearing their caretaker, defendant, being violently assaulted and seeing him bloody and beaten. Further, according to defendant, the boys were frightened and easily manipulated by the police because their mother had recently died and they did not want to be separated.

¶ 42 In this case, the trial court conducted a full postconviction evidentiary hearing. The trial court heard all of the testimony and was in the best position to observe and weigh the credibility of the witnesses. See *People v. Jacobazzi*, 398 Ill. App. 3d 890, 912 (2009). The trial court stated that it considered all of the witnesses' testimony. The trial court specifically noted that the abuse occurred "when these children were of a very tender age." After reviewing the record, we cannot say that its decision was manifestly erroneous. Accordingly, we affirm the trial court's denial of defendant's postconviction petition.

¶ 43 Defendant cites *People v. Steidl*, 177 Ill. 2d 239 (1997), to support his argument. However, defendant ignores the crucial differences between this case and *Steidl*. In *Steidl*, the Illinois supreme court held that the defendant was entitled to a postconviction evidentiary hearing on the basis of newly discovered evidence concerning a key witness's recanting of trial testimony. *Id.* at 260. The Illinois supreme court did not grant defendant a new trial. *Id.* In this case, defendant received a postconviction evidentiary hearing. Thus, *Steidl* is distinguishable from this case. Further, for the reasons stated throughout this decision, we cannot say that the trial court's decision in this case was manifestly erroneous.

¶ 44

III. CONCLUSION

¶ 45 For these reasons, the judgment of circuit court of Lake County is affirmed.

¶ 46 Affirmed.