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2013 IL App (3d) 110300-U

Order filed February 7, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE
OF ILLINOIS,

Plaintiff-Appellee,

v.

RONALD LEE STOECKER,

Defendant-Appellant.

) Appeal from the Circuit Court
) of the 10th Judicial Circuit,
) Stark County, Illinois,
)
) Appeal No. 3-11-0300
) Circuit No. 96-CF-14
)
) Honorable
) Kevin R. Galley,
) Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Wright concurred in the judgment.
Justice Lytton dissented.

ORDER

¶ 1 *Held:* The trial court erred in denying defendant's postconviction motion for DNA testing where the result of the test had the potential to produce new, noncumulative evidence materially relevant to defendant's assertion of actual innocence.

¶ 2 Following a jury trial, defendant, Ronald Lee Stoecker, was found guilty of first degree murder (720 ILCS 5/9-1(a)(2) (West 1996)) and aggravated criminal sexual assault (720 ILCS

5/12-14(a)(2) (West 1996)). Defendant was sentenced to concurrent terms of imprisonment of natural life and 30 years, respectively. Defendant's convictions and sentences were affirmed by this court on appeal. *People v. Stoecker*, No. 3-98-0750 (1999) (unpublished order under Supreme Court Rule 23). Subsequently, defendant filed multiple *pro se* motions and postconviction petitions (725 ILCS 5/122-1 *et seq.* (West 2008)), which included a request for postconviction deoxyribonucleic acid (DNA) testing pursuant to section 116-3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/116-3 (West 2008)). Defendant's fifth amended postconviction petition was dismissed as untimely. On appeal, we affirmed the dismissal of defendant's postconviction petition. *People v. Stoecker*, 384 Ill. App. 3d 289 (2008). Defendant filed a renewed motion for DNA testing, which the trial court denied. Defendant appeals, arguing that the trial court erred in denying his request for Y-STR DNA testing because he satisfied the statutory requirements for postconviction DNA testing. We reverse and remand with directions.

¶ 3

FACTS

¶ 4 On May 29, 1996, 15-year-old Jean Humble left the Children's Home in Peoria, Illinois, which was located in a high-crime area of drugs and prostitution. An employee of the Children's Home sighted Humble walking at 8:45 p.m. Soon thereafter, Humble accepted a ride from a man, who drove her to a remote rural area a few miles south of Wyoming, Illinois. He sexually assaulted her, cut her throat, and left her. Humble walked to get help and arrived at the home of Sadie Streitmatter at 10:45 p.m., indicating that she had been raped. Streitmatter called 911.

¶ 5 Just after 12 a.m., Humble was transported to a hospital in Peoria via ambulance. On the way, ambulance personnel observed a young male throwing items from his maroon car into a

garbage dumpster.

¶ 6 At the hospital, Humble was unable to speak. She responded to questions by writing her responses or squeezing the fingers of a police officer. She described her assailant as a Caucasian in his twenties with short, blonde hair and who was driving a red, four-door car. According to a nurse, police showed Humble a photographic lineup of mug shots. Police indicated that Humble did not make an identification because she was too tired and nonresponsive. She died in the hospital 30 days later without making a photo identification of her assailant.

¶ 7 At the time of the incident, defendant was 25 years old and lived with his parents, two older brothers, and his younger sister 30 miles north of Peoria, in Wyoming, Illinois. Defendant's family had previously owned a home within a mile from the crime scene, where defendant previously resided. The house was vacant at the time of Humble's attack.

¶ 8 On the day of the attack, defendant attended a class in Peoria at the Center for Prevention of Abuse from 6 to 8 p.m. He was required to attend the class as a condition of his probation for abducting his children during a custody battle with his estranged wife. The coordinator for the class saw defendant wearing a knife on his belt. A member of the class testified that he saw defendant leave in a red car. He did not recall defendant wearing a knife. The class member described defendant as having long hair.

¶ 9 At 4:30 a.m. the morning after the attack, defendant purchased a plane ticket to Costa Rica in cash, without a prior reservation, and left the country. Earlier that month, defendant had indicated to his boss that if he got into any legal trouble he would flee to Costa Rica due to Costa Rica's lenient extradition rules. Defendant did not tell his boss that he did not plan to return to work, and he did not collect his final paycheck. In the conversation with his boss, defendant

referenced legal problems with his estranged wife. Defendant had problems with child support and pending charges related to fleeing the country with his children.

¶ 10 At 7:30 a.m., on May 30, 1996, a part-time police officer who was also an employee of the Wyoming Streets Department was hanging banners on poles in front of the Stoecker home, when he observed defendant's brothers removing and burning the interior of a red car.

Defendant's family owned a red 1986 four-door Chevrolet Nova at the time of the incident. The former wife of defendant's brother testified that on the day of Humble's attack she saw defendant driving the Stoeckers' red car toward Peoria at 4:30 p.m.

¶ 11 Defendant's family and friends testified that the Stoeckers' red car was on blocks with its tires removed on the day of the incident because it had broken down earlier in the week.

Defendant's family indicated that the car was inoperable on the day of the attack due to a blown engine. Defendant's brother testified that he began disassembling the vehicle the day before the incident in order to sell it as scrap metal. He burned the seats and carpet in the family's burn tank and cut the car into pieces in order to fit it into the back of his pickup truck. It was a common practice for the Stoeckers to do burnings in the burn tank on their property.

¶ 12 Police recovered the vehicle's engine from the salvage yard. The oil pan contained pea-size gravel and debris. A mechanic was able to get the engine to run after hooking it up to a battery and repairing the fuel pump. Tire tracks found at the crime scene did not match the tires the Stoeckers turned over to police, which they indicated had been removed from the car.

¶ 13 Eighteen months after leaving for Costa Rica, defendant was apprehended and extradited to Illinois on charges of the sexual assault and murder of Humble. The case proceeded to a jury trial. Defendant's mother testified that in January 1996, the whole Stoecker family had decided

they were going to move to Costa Rica. The family members applied for passports early in the year, which they received in April of 1996. Defendant's move to Costa Rica would have been a violation of his probation. According to defendant's family, defendant planned to leave for Costa Rica after his weekly class so that his violation of probation would not be noticed for at least a week. He wanted to leave the country in anticipation of being sentenced to three years on charges pending against him.

¶ 14 Defendant's family testified that on the day of the incident defendant returned from his class around 9 p.m. He appeared clean, and his demeanor was normal. Just past midnight, defendant and his mother left for the airport.

¶ 15 Forensic scientists for the Illinois State Police testified that the victim's blouse contained four hairs. Of the four hairs from the victim's shirt, two were consistent as originating from the victim and two did not originate from either the victim or defendant. No seminal material was identified on the victim's underpants, blouse, or bra. No seminal material was identified on the vaginal swabs or oral swabs contained in the sexual assault evidence kit. The rectal swab contained blood but was not forwarded to the crime lab for testing. The victim's underpants contained blood but were not forwarded to the crime lab for testing. Blood found in the victim's nail scrapings was consistent with Humble's DNA profile.

¶ 16 Humble's pants had a stain that contained seminal material. In the stain, there was a "very small" amount of sperm in an area that was "blood stained and very diluted."

¶ 17 Aaron Small, a forensic scientist for the Illinois State Police, testified that DNA differs from person to person. Small testified that he performed DNA testing using a procedure known as Polymerase Chain Reaction (PCR). PCR is a procedure that amplifies the available DNA

from a stain so that enough DNA is available for testing. Small performed polymarker testing and examined 5 loci in the DNA samples from Humble and defendant. Humble and defendant shared the same DNA type at all five loci. Small testified that it was not "impossible to conceive that people can share the same DNA types at all of these loci" because there are only two or three different types at those loci. Small also testified regarding comparisons of the DNA standards of defendant and Humble to that of the DNA extracted from the semen stain of Humble's pants. Small testified that the "semen identified on the stain from the slacks [of the victim] *** could have originated from [defendant]." Small also testified that a DNA profile consistent with defendant's profile could be expected to be found in approximately 1 in 41,000 Caucasians.

¶ 18 Rhonda Carter, another forensic scientist with the Illinois State Police, performed additional DNA testing. Carter compared the DNA standards from Humble and defendant to the semen stain from Humble's pants. She testified that defendant's DNA profile would be expected to occur in approximately 1.1 trillion Caucasians and concluded that the semen in the stain was consistent with having originated from defendant.

¶ 19 Following his jury trial, defendant was convicted of first degree murder and aggravated criminal sexual assault. Defendant was sentenced to concurrent terms of imprisonment of natural life without parole for the murder conviction and 30 years for the aggravated criminal sexual assault conviction. On direct appeal, this court affirmed defendant's convictions and sentences. *Stoecker*, No. 3-98-0750.

¶ 20 On May 2, 2005, defendant filed a *pro se* postconviction petition, which was summarily dismissed. Defendant filed five subsequent amended petitions for postconviction relief. The trial court dismissed defendant's fifth petition, and defendant appealed. On appeal, this court

affirmed the dismissal based on the untimely filing of the petition. *Stoecker*, 384 Ill. App. 3d 289. Defendant filed a renewed motion for DNA testing, asserting that the DNA sample from the semen stain should be retested using Y-STR testing, which was not available at the time of trial. Defendant's attorney adopted defendant's motion and additionally argued that Y-STR testing was well-suited for the mixed gender sample involved in this case. The trial court denied defendant's motion, noting that there were no expert affidavits indicating the new DNA test would yield a different result and that the evidence against defendant was overwhelming. Defendant appeals.

¶ 21

ANALYSIS

¶ 22 On appeal, defendant argues that the trial court erred in denying his request for Y-STR DNA testing because he satisfied the statutory requirements for postconviction DNA testing. A postconviction motion for forensic DNA testing is reviewed *de novo*. *People v. Brooks*, 221 Ill. 2d 381 (2006).

¶ 23 A defendant may file a postconviction motion for forensic DNA testing pursuant to section 116-3 of the Code. 725 ILCS 5/116-3 (West 2010). Under section 116-3, a defendant may make a motion for the performance of forensic DNA testing of evidence that was secured in relation to the trial which resulted in the defendant's conviction, and: (1) at the time of trial, the evidence was not subject to the testing which is now requested; or (2) although previously subjected to testing, the evidence 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) (West 2010).

¶ 24 In making such a motion for testing, the defendant must present a *prima facie* case that:

(1) identity was the issue in the trial which resulted in his or her conviction; and (2) the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect. 725 ILCS 5/116-3(b) (West 2010). After defendant has established a *prima facie* case for postconviction DNA testing, the trial court shall allow the testing upon a determination that: (1) 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; and (2) the testing requested employs a scientific method generally accepted within the relevant scientific community. 725 ILCS 5/116-3(c) (West 2010).

¶ 25 In this case, the State does not dispute that identification was the central issue at trial, or that the evidence to be tested has been subject to a secure chain of custody. Therefore, defendant has established a *prima facie* case for postconviction DNA testing. Additionally, the requested test, Y-STR testing, was unavailable at the time of defendant's trial. See *People v. Barker*, 403 Ill. App. 3d 515 (2010). Therefore, the issue in this case is whether the requested Y-STR testing had the scientific potential to produce new, noncumulative evidence materially relevant to defendant's assertion of actual innocence.

¶ 26 Here, the stain on Humble's pants was a mix of Humble's blood and her unknown assailant's semen. Y-STR testing is well-suited for mixed-gender samples because it targets only the DNA of the male chromosomes. *Barker*, 403 Ill. App. 3d 515. In this case, the original DNA in the stain was extracted from a very small amount of sperm with a diluted and watery area that was mixed with Humble's blood. According to Small, Humble and defendant had similar DNA profiles. The requested Y-STR testing had the scientific potential to produce new,

noncumulative evidence materially relevant to defendant's assertion of actual innocence because Y-STR testing has the ability to " 'identify a male contributor or contributors in cases of sexual assault, where DNA from both the female and male[] is present.' " See *Id.* at 527 (quoting J. Epstein, "Genetic Surveillance"—*The Bogeyman Response to Familial DNA Investigations*, U. Ill. J. Tech. & Pol'y 141, 148 (Spring 2009)). "The technique may also be used in cases with fingernail scrapings comprised of cells from the female victim and cells from the perpetrator." *Barker*, 403 Ill. App. 3d at 528.

¶ 27 The contributor to the semen stain was a major issue at trial. If defendant were excluded as a contributor to the semen stain on Humble's pants, such a result would significantly advance defendant's assertion of actual innocence. The remaining evidence of defendant's guilt would be the circumstantial evidence of defendant's flight to Costa Rica and conflicting testimony of whether defendant was driving a red four-door vehicle and wearing a knife on the night of the attack. There was no identification testimony, and the weapon was not recovered. Because Y-STR testing would have the potential to produce new, noncumulative evidence materially relevant to defendant's assertion of actual innocence, the trial court erred in denying defendant's section 116-3 motion for postconviction DNA testing.

¶ 28 CONCLUSION

¶ 29 For the foregoing reasons, the judgment of the circuit court of Stark County is reversed, and this case is remanded for Y-STR testing to be performed on the DNA extracted from the semen stain on Humble's pants.

¶ 30 Reversed and remanded with directions.

¶ 31 JUSTICE LYTTON, dissenting.

¶ 32 I disagree with the majority's conclusion that the results of the Y-STR testing would have the potential to produce new, noncumulative evidence materially relevant to defendant's assertion of actual innocence. Therefore, I respectfully dissent.

¶ 33 Under section 116-3, a defendant may make a motion for the performance of forensic DNA testing of evidence that was previously subjected to testing if there is 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)(2) (West 2010). Additionally, it must be determined 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." 725 ILCS 5/116-3(c)(1) (West 2010).

¶ 34 Here, there is no indication that there is a reasonable likelihood that the requested Y-STR would produce more probative results than the previous PCR DNA testing or that the Y-STR testing has the potential to produce "new, noncumulative evidence" regarding defendant's claim of actual innocence. Illinois State Police forensic scientist Aaron Small testified that he performed PCR DNA testing on the semen stain and concluded that defendant could not be excluded as a possible contributor to the stain. Small indicated defendant's DNA profile would occur in 1 in 41,000 Caucasians, 1 in 92,000 African Americans, and 1 in 70,000 Hispanics. Illinois State Police forensic scientist Rhonda Carter testified that she performed a more detailed form of PCR DNA testing and concluded that defendant could not be excluded as a possible contributor to the stain. Carter indicated that defendant's DNA profile would occur in 1 in 1.1 trillion Caucasians and 1 in 310 trillion African Americans.

¶ 35 The record also contains a June 1, 1998, report from an independent laboratory, Cellmark

Diagnostics, which was attached as an exhibit to the State's motion to dismiss defendant's motion for DNA testing. The report indicated that LeeAnn Hooper of Cellmark conducted PCR testing on evidence that Small had identified as the semen stain, victim's blood standard, and defendant's blood standard. The Cellmark report concluded that defendant could not be excluded as a source of the DNA obtained from the semen stain. The Cellmark report also indicated that the frequency that defendant's DNA profile occurred was 1 in 6,500 Caucasians, 1 in 7,200 African Americans, and 1 in 8,700 Hispanics.

¶ 36 Defendant failed to indicate how Y-STR testing would produce a more probative result than the previous DNA testing. Both tests have the ability to either include or exclude individuals as a possible contributor of DNA. Defendant argued that Y-STR testing has the ability to focus on the male portion of a mixed gender sample. However, Small explained that a "differential extraction of the DNA" was performed on the stain from the victim's pants to separate a "female fraction" and a "male fraction," with results indicating that defendant could be included as a possible contributor to the semen stain on the victim's pants. Defendant does not claim that there was any error on the part of the forensic scientists conducting the original DNA testing or that results of their testing were questionable or inaccurate. Therefore, there is no indication that Y-STR testing would do anything more than either include or exclude defendant as a possible contributor, which is similar to the PCR DNA testing already accomplished in this case.

¶ 37 For the same reasons, defendant fails to indicate how the Y-STR testing would produce "new, noncumulative evidence." Without having indicated some inaccuracy in the original testing, the results of the Y-STR testing should be the same as the results of the PCR testing;

those results indicated that defendant could be included as a possible contributor to the semen stain found on the victim's pants.

¶ 38 Because defendant failed to demonstrate that the Y-STR testing could produce "a reasonable likelihood of more probative results" or "new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence," his motion was appropriately denied. I would affirm the trial court's order.