

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (3d) 110933-U

Order filed March 6, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of the 12th Judicial Circuit,
Plaintiff-Appellee,) Will County, Illinois,
)
v.) Appeal No. 3-11-0933
) Circuit No. 05-CF-732
JUAN SANTANA,)
) Honorable
Defendant-Appellant.) Richard C. Schoenstedt,
) Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice McDade dissented.

ORDER

- ¶ 1 *Held:* Defendant's request for postconviction DNA testing was properly denied where the testing would not produce evidence materially relevant to defendant's claim of actual innocence.
- ¶ 2 Defendant, Juan Santana, was convicted of two counts of first degree murder (720 ILCS 5/9-1(a)(2), (a)(3) (West 2004)) and one count of aggravated arson (720 ILCS 5/20-1.1(a)(1) (West 2004)). The trial court imposed a sentence of natural life on each of the murder counts with a

concurrent 30-year term on the aggravated arson conviction. Subsequently, defendant filed a motion for deoxyribonucleic acid (DNA) testing under section 116-3(a)(1) of the Code of Criminal Procedure of 1963 (the Code) (725 ILCS 5/116-3(a)(1) (West 2010)), which was denied by the trial court. Defendant appeals, arguing that the trial court erred in denying his motion because forensic testing would potentially produce evidence materially relevant to his claim of actual innocence. We affirm.

¶ 3

FACTS

¶ 4 Early in the morning on April 9, 2005, Maria Nunez and Merary Nunez died in a fire at their home in Joliet, Illinois, resulting from a fire bomb being thrown through their window. On April 28, 2005, defendant was indicted on four counts of first degree murder (720 ILCS 5/9-1(a)(2), (a)(3) (West 2004)) and one count of aggravated arson (720 ILCS 5/20-1.1(a)(1) (West 2004)). Two alleged accomplices, Ignacio Jacobo and Sergio Anguiano, were also indicted for the crimes. Anguiano agreed to testify against defendant in exchange for dismissal of the murder charges and a blind plea of guilty to the charge of aggravated arson.

¶ 5 At trial, witnesses testified to two instances of alleged gang-motivated acts against the Nunez residence, one occurring the week before the fire and another occurring approximately six months earlier. The evidence establishing defendant's criminal culpability came primarily from the testimony of Jose Rodriguez and Anguiano. Rodriguez testified that on the night of the fire, at approximately 1 a.m., he loaned his Jeep to defendant, Jacobo, and Anguiano. When they returned with the Jeep approximately 40 minutes later, defendant told Rodriguez that two Latin Kings lived near him, they were a nuisance, and he wanted to get rid of them.

¶ 6 Anguiano testified that he drove defendant and Jacobo in Rodriguez's Jeep to a location

approximately one block from the Nunez residence, after which the two left Anguiano in the vehicle and returned approximately five minutes later. He then drove back to Rodriguez's apartment. Anguiano also testified that he was subsequently approached by defendant, who told him not to say anything to the police regarding the incident.

¶ 7 Additionally, a witness to the fire, Shauna Chevalier, observed two perpetrators running from the Nunez residence shortly after the fire started. Although Chevalier could not see their faces, one of the perpetrators was wearing a white sweatshirt, and one was wearing a gray sweatshirt. She saw the perpetrators get into a Jeep, later identified as Rodriguez's vehicle, about one block from the residence. She was able to get a partial license plate number from the Jeep.

¶ 8 When police located Rodriguez's Jeep later that day, they found three sweatshirts in the cargo area, including two gray sweatshirts and an oatmeal colored sweatshirt. The sweatshirts were not analyzed for DNA evidence. The State introduced the sweatshirts into evidence. The State then elicited testimony from Rodriguez that the sweatshirts were not his, and they were not in the Jeep prior to loaning it to defendant. Chevalier was never asked to identify the sweatshirts recovered from the Jeep as those worn by the perpetrators.

¶ 9 Defendant testified on his own behalf and maintained his innocence. Through his own testimony and that of his wife, brother, and neighbor, he presented evidence attempting to establish an alibi on the night of the fire. Defendant asserted that he was out with friends on the night of the fire, but he had returned home hours before the fire at the Nunez residence.

¶ 10 The jury found defendant guilty of four counts of first degree murder and one count of aggravated arson. Two of the murder counts merged into the remaining two murder counts, and the court entered judgment on three convictions. The court imposed sentence, as aforesaid.

¶ 11 On direct appeal, this court affirmed defendant's convictions and sentences. *People v. Santana*, No. 3-06-0807 (2008) (unpublished order under Supreme Court Rule 23). Defendant later filed a postconviction petition, alleging ineffective assistance of both trial and appellate counsel. The trial court summarily dismissed defendant's petition as frivolous and patently without merit. This court affirmed the trial court's dismissal of defendant's petition. *People v. Santana*, No. 3-10-0209 (2011) (unpublished order under Supreme Court Rule 23).

¶ 12 On August 12, 2011, defendant filed a motion for DNA testing pursuant to section 116-3(a)(1) of the Code (725 ILCS 5/116-3(a)(1) (West 2010)), seeking the testing of sweatshirts that were allegedly worn by the perpetrators of the offense. According to defendant, if his experts were allowed to perform the DNA testing, the results would reveal the absence of his DNA from the sweatshirts, thereby supporting his claim of actual innocence.

¶ 13 Following a hearing, the trial court found that defendant met his burden of showing that identity was at issue in his trial and that the sweatshirts had been maintained under a secure chain of custody. See 725 ILCS 5/116-3(b) (West 2010). The trial court further found that the testing requested by defendant employs a scientific method generally accepted within the relevant scientific community. See 725 ILCS 5/116-3(c)(2) (West 2010). But the trial court denied the motion, finding that defendant failed to prove the DNA testing would reveal evidence materially relevant to his assertion of actual innocence, in light of the substantial evidence presented against defendant at trial. See 725 ILCS 5/116-3(c)(1) (West 2010). Defendant appeals.

¶ 14 ANALYSIS

¶ 15 Defendant argues that the trial court erred in denying his motion for DNA testing, because allowing forensic testing of the sweatshirts would potentially produce evidence materially relevant

to his claim of actual innocence. Specifically, defendant contends that if his DNA is not present on the sweatshirts or if Rodriguez's DNA is present, it would either eliminate defendant as a perpetrator or implicate Rodriguez.

¶ 16 A denial of a postconviction request for forensic testing is subject to *de novo* review upon appeal. *People v. Barrow*, 2011 IL App (3d) 100086. Under section 116-3(c)(1) of the Code, the trial court shall allow forensic testing if the court determines 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)(1) (West 2010). Materially relevant evidence is that which tends to significantly advance a defendant's claim of actual innocence. *People v. Savory*, 197 Ill. 2d 203 (2001); *Barrow*, 2011 IL App (3d) 100086. The determination of whether forensic testing would provide materially relevant evidence requires a consideration of the evidence introduced at trial, as well as an assessment of the evidence defendant is seeking to test. *Id.*

¶ 17 In considering the evidence introduced at trial, the majority of the State's evidence that proved defendant's guilt primarily came from the testimony of Anguiano and Rodriguez. Their testimony established that soon before the fire, Anguiano drove defendant and an accomplice to the scene of the crime. Upon returning from the trip, defendant allegedly said he wanted to get rid of two Latin Kings who lived nearby. Chevalier's testimony linked the Jeep and the sweatshirts to the two perpetrators that fled the Nunez residence on the night of the fire.

¶ 18 Defendant argues that there was ample evidence to demonstrate that the sweatshirts were worn by the perpetrators, thereby making forensic testing of them material. However, at trial, the evidence concerning the sweatshirts was relatively minor, consisting only of Chevalier identifying

two perpetrators wearing a white and a gray sweatshirt, and a police officer that identified three sweatshirts discovered in the Jeep. While the sweatshirts were referred to in the State's case against defendant, Chevalier was never asked to identify them as those worn by the two perpetrators, and there was no forensic testing performed to connect the sweatshirts located in the Jeep to defendant or his alleged accomplices. We cannot say that forensic testing would provide any potentially relevant evidence to undermine the State's case. See *Savory*, 197 Ill. 2d 203 (finding that forensic testing of evidence that played a minor role in the State's case against defendant, even if favorable to defendant, would not significantly advance a claim of actual innocence, but would only exclude one minor item from the State's evidence); but see *People v. Johnson*, 205 Ill. 2d 381 (2002) (allowing forensic testing of a rape kit where results might identify the assailant and not merely impeach the State's evidence).

¶ 19 Defendant further argues that in light of the circumstantial identification evidence against him, forensic testing would potentially eliminate defendant or implicate Rodriguez as a perpetrator, thereby significantly advancing his claim of actual innocence. However, even if the sweatshirts that were allegedly worn by the perpetrators were tested, the best defendant could hope for is the absence of his DNA and the presence of someone else's. While defendant need not demonstrate that DNA test results would completely exonerate him, he must show that such evidence would "significantly advance" that claim. See *Savory*, 197 Ill. 2d at 215. Here, the presence or absence of defendant's DNA does not exclude him from involvement in the crimes, where he allegedly made admissions to Rodriguez regarding the crime and Anguiano placed defendant near the scene of the fire. Testing would merely reveal, at most, that defendant either did not deposit genetic material on the sweatshirts or did not wear any of the sweatshirts found in the Jeep during the commission of the

crime.

¶ 20 If the testing resulted in discovery of someone else's DNA on the sweatshirt, such as Rodriguez's, this result also would not undermine the State's case against defendant. If Rodriguez's DNA was found, such evidence would refute his trial testimony that he had never seen the sweatshirts before; however, such evidence would not necessarily implicate Rodriguez in the crimes or exonerate defendant. It would not significantly advance defendant's alibi, because defendant's involvement is not undermined by Rodriguez' participation in the crime.

¶ 21 Accordingly, we hold that the trial court did not err in denying defendant's request for forensic testing.

¶ 22 **CONCLUSION**

¶ 23 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 24 Affirmed.

¶ 25 JUSTICE McDADE, dissenting.

¶ 26 The majority finds that defendant's request for post conviction DNA testing was properly denied because the testing would not produce evidence materially relevant to defendant's claim of actual innocence. *Supra* ¶ 20. I disagree and therefore respectfully dissent.

¶ 27 In denying defendant's request, the majority relies heavily upon the testimony of Anguiano and Rodriguez. *Supra* ¶ 17. The credibility of both Anguiano and Rodriguez, however, was at issue during defendant's trial. Specifically, Anguiano agreed to testify against defendant in exchange for dismissal of murder charges against him. Rodriguez, on the other hand, had told different stories before settling on the one he ultimately testified to. While I

acknowledge that the credibility of a witness is within the province of the trier of fact (*People v. Smith*, 185 Ill. 2d 532, 542 (1999)), in the context of a request for DNA testing following a conviction, the strength of the evidence supporting the conviction is very much at issue. *People v. Barrow*, 2011 Ill. App. (3d) 10086. The fact that the two most incriminating witnesses against defendant (Anguiano and Rodriguez) suffered from credibility issues renders the question regarding the ownership of sweatshirts extremely relevant.

¶ 28 Clearly, the State believed the three sweatshirts (two gray, one oatmeal) were relevant because they entered them into evidence. Rodriguez testified the sweatshirts were not in the Jeep prior to loaning it to defendant. Chevalier testified that one of the perpetrators was wearing a white sweatshirt, and one was wearing a gray sweatshirt. While the majority is correct that Chevalier was never expressly asked to identify the sweatshirts found in the Jeep (*supra* ¶ 18), the implication in light of the above testimony was clear: defendant was one of the individuals wearing the sweatshirts, which thereby linked him to the scene of the crime. Consequently, if defendant is able to demonstrate that his DNA was not on the sweatshirts, such a finding would significantly advance his claim that he was not present and was actually innocent.

¶ 29 I also find it significant that the sweatshirts have never been subject to a DNA test. This is not a situation where the defendant is seeking new testing. Instead, we have a situation where the defendant merely seeks to have initial DNA testing done on evidence that the State presented for the purpose of linking defendant to the scene of the crime. In light of these particular circumstances, I would reverse the trial court's denial of defendant's motion for DNA testing.