

2014 IL App (1st) 131177-U
No. 1-13-1177
December 23, 2014

SECOND DIVISION

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).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	Of Cook County.
Plaintiff-Appellee,)	
)	
v.)	Nos. 89 CR 13531
)	
CHRIS BREWER,)	The Honorable
)	Mary Margaret Brosnahan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court correctly denied the defendant's motion for DNA testing, where the defendant failed to show that the proposed testing could potentially produce evidence materially relevant to his claim of actual innocence.

¶ 2 On numerous occasions this court has reviewed the conviction of Chris Brewer for the murder of his aunt, Minnie Rogers. He filed a motion for DNA testing of his co-defendant's shoes, arguing that new testing might show that the traces of blood found on those shoes came from Rogers. Because Brewer has not shown that the proposed testing could produce

evidence materially relevant to his claim of actual innocence, we affirm the dismissal of his motion for DNA testing.

¶ 3

BACKGROUND

¶ 4

On June 6, 1989, Bernice Cooks, a resident in a senior citizens' building, heard her neighbor, Minnie Rogers, yelling for help. When Cooks opened Rogers's door, someone she could not see hit her in the head, knocked her to the floor, and blindfolded her. She heard a voice ask Rogers where she kept her money. Later, another neighbor came into Rogers's apartment and found Cooks and Rogers lying injured on the floor. The neighbor called paramedics. Rogers, who had suffered severe blunt trauma to her head and torso, died during surgery.

¶ 5

Police arrested Rogers's nephew, Brewer, later that day. The following day, Brewer signed a statement in which he said that on June 6, Randy Turner suggested robbing Rogers. A man named Johnny drove them to Rogers's building. Rogers let them in. Brewer used her bathroom, and when he returned he saw Turner choking and hitting Rogers, demanding money. Cooks came in, and Brewer put his hand over her mouth and told her to hold a towel over her eyes. Turner and Brewer stole about \$270 from Rogers's apartment.

¶ 6

A grand jury charged Turner and Brewer with first degree murder and robbery. The trial court denied Brewer's motion to suppress his statement. At the simultaneous bench trials, Johnny Averson testified that he gave Turner and Brewer a ride over to Rogers's building, and he waited while they went inside. About 15 minutes later, Turner and Brewer left the building, walking fast. Turner and Brewer divided some cash. Averson gave them a ride to

their next destination. Another resident of Rogers's building testified that she saw Turner and Brewer enter the building, and she saw them leave about 30 minutes later.

¶ 7 The trial court admitted Brewer's confession into evidence against Brewer, but not against Turner. Turner and the prosecution stipulated that police took from Turner the shoes he wore on June 7, 1989, and a preliminary examination showed a blood stain on the side of one shoe. However, the serologist found too little blood on the shoe for further testing, so she could not identify the source of the blood.

¶ 8 The trial court found the evidence in the case against Turner insufficient to prove that he participated in the murder. The court held that Cooks's testimony did not establish that more than one assailant entered Rogers's apartment to rob her, because Cooks could not say whether anyone beat Rogers while the man knocked down and blindfolded Cooks. The court found Brewer guilty of first degree murder and robbery and sentenced him to 90 years in prison. The appellate court affirmed the trial court's judgment. *People v. Brewer*, No. 1-92-3188 (1994) (unpublished order under Supreme Court Rule 23).

¶ 9 Brewer filed a postconviction petition in 1995. The circuit court dismissed the petition and the appellate court affirmed the judgment. *People v. Brewer*, No. 1-96-2123 (1997) (unpublished order under Supreme Court Rule 23). In 2002, Brewer filed a motion to have his clothes subjected to DNA testing. The circuit court denied the motion, and the appellate court affirmed. *People v. Brewer*, No. 1-02-3579 (2004) (unpublished order under Supreme Court Rule 23). In 2006, Brewer filed a motion for leave to file a successive postconviction petition. The circuit court denied the motion, and the appellate court affirmed. *People v. Brewer*, No. 1-06-3375 (2008) (unpublished order under Supreme Court Rule 23). In 2009,

Brewer filed a petition for habeas corpus. The circuit court denied the petition, and the appellate court affirmed. *People v. Brewer*, No. 1-09-2182 (2010) (unpublished order under Supreme Court Rule 23). In 2011, Brewer filed another motion for DNA testing of his clothes. The circuit court denied the motion, and the appellate court affirmed. *People v. Brewer*, No. 1-11-1705 (2012) (unpublished order under Supreme Court Rule 23).

¶ 10 On December 20, 2012, Brewer filed the motion that forms the basis for the appeal presently before this court. Brewer requested DNA testing of the shoes police took from Turner on June 7, 1989. Brewer contended that DNA testing might now show that Rogers's blood stained Turner's shoe. According to Brewer, the trial court found that only one assailant entered Rogers's apartment, and therefore the DNA testing of Turner's shoe might support an inference that Turner, and not Brewer, entered Rogers's apartment and murdered her.

¶ 11 The circuit court denied the motion for DNA testing. Brewer now appeals.

¶ 12 ANALYSIS

¶ 13 Section 116-3 of the Code of Criminal Procedure governs posttrial forensic testing of evidence. 725 ILCS 5/116-3 (West 2012). Section 116-3 provides:

"(a) A defendant may make a motion before the trial court *** for the performance of *** forensic DNA testing *** on evidence that was secured in relation to the trial which resulted in his or her conviction, and:

(2) 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. ***

(c) The trial court shall allow the testing under reasonable conditions *** upon a demonstration 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." 725 ILCS 5/116-3 (West 2012).

¶ 14 We review *de novo* the dismissal of a motion for DNA testing under section 116-3. *People v. O'Connell*, 227 Ill. 2d 31, 35 (2007).

¶ 15 Section 116-3 requires an order for DNA testing only when the defendant demonstrates 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 2012). In *People v. Savory*, 197 Ill. 2d 203, 213 (2001), our supreme court explained that "evidence which is 'materially relevant' to a defendant's claim of actual innocence is simply evidence which tends to significantly advance that claim." The "determination of whether the forensic evidence is 'materially relevant' to the defendant's actual-innocence claim requires an evaluation of the evidence introduced at trial, as well as the evidence the defendant seeks to test." *People v. Johnson*, 205 Ill. 2d 381, 396 (2002).

¶ 16 In *Savory*, the defendant sought DNA testing of his bloodstained trousers. The *Savory* court noted that "testimony regarding the possible source of the bloodstain on the pair of trousers was only a minor part of the State's evidence," and held that "the bloodstain evidence was essentially a collateral issue at trial and was not central to the State's evidence of guilt." *Savory*, 197 Ill. 2d at 214-15. The *Savory* court affirmed the trial court's denial of Savory's motion for DNA testing. *Savory*, 197 Ill. 2d at 215-16.

¶ 17 We find that the evidence at issue here, like the evidence in *Savory*, lacks relevance to a claim of actual innocence. The State did not use Turner's shoes against Brewer at all. If the blood on Turner's shoes came from Rogers, the evidence would corroborate Brewer's confession and strengthen the case against Brewer. Evidence that the blood did not come from Rogers would not significantly undercut any of the evidence used at trial against Brewer.

¶ 18 Brewer relies primarily on his claim that the trial court found that only one assailant entered Rogers's apartment and beat her to death. But the trial court made no such finding in the case against Brewer. Instead, in the case against Brewer, the trial court found Brewer's confession credible and corroborated. The confession presented persuasive evidence that both Brewer and Turner participated in the murder of Rogers. The court did not admit Brewer's confession against Turner. In the case against Turner, eyewitnesses placed Turner with Brewer in the senior citizens' building, but, according to the trial court, no evidence persuasively showed that Turner accompanied Brewer into Rogers's apartment. The court particularly noted in the case against Turner that Cooks, the only person with Rogers and the assailants near the time of the beating, could not say whether anyone continued to beat

Rogers while someone hit and blindfolded Cooks. The trial court's findings in the case against Turner cannot make any result from DNA testing of Turner's shoes relevant to Brewer's claim of actual innocence.

¶ 19 Therefore, because Brewer has failed to demonstrate that the result of DNA testing has the scientific potential to produce evidence materially relevant to Brewer's assertion of actual innocence, we affirm the denial of his motion for DNA testing.

¶ 20 Affirmed.