

2015 IL App (2d) 130474-U
No. 2-13-0474
Order filed April 27, 2015

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 99-CF-0405
)	
JESSE B. MARTINEZ,)	Honorable
)	T. Clint Hull,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Holding:* Because the trial court was in the superior position to weigh the witnesses' credibility, its determination to deny defendant's petition for postconviction relief at the third stage was not against the manifest weight of the evidence. Thus, we affirmed.

¶ 2 In 2001, a jury found defendant, Jesse B. Martinez, guilty of first-degree murder pursuant to section 9-1(a)(1) of the Criminal Code of 1961 (the Code) (720 ILCS 5/9-1(a)(1) (West 1998)), attempted first-degree murder pursuant to sections 8.4 and 9-1(a)(1) of the Code (720 ILCS 5/8.4 (West 1998); 720 ILCS 5/9-1(a)(1) (West 1998)), and home invasion pursuant to section 12-11(a)(2) of the Code (720 ILCS 5/12-11(a)(2) (West 1998)). The circumstances

underlying defendant's convictions stemmed from a shooting at a Howard Johnson hotel in Aurora. The trial court sentenced defendant to a term of 76 years' imprisonment, and this Court affirmed his conviction on direct appeal (see *People v. Martinez*, 2-04-0094 (2005) (unpublished order under Supreme Court Rule 23)).

¶ 3 In 2006, defendant filed a *pro se* postconviction petition pursuant to section 122-1 of the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 (West 2006)). As amended, defendant's petition raised various theories of relief, including a claim of actual innocence. Defendant premised his actual innocence claim on two state witnesses recanting their testimony and an affidavit from another individual, who had refused to testify at trial, averring that defendant was not involved in the crimes. The trial court granted the State's motion to dismiss the petition with respect to all claims except for defendant's actual innocence claim, which claim proceeded to an evidentiary hearing. Following that hearing, the trial court denied defendant's petition. Defendant now appeals, contending that the trial court's determination to deny his petition was against the manifest weight of the evidence. We affirm.

¶ 4

I. BACKGROUND

¶ 5 The circumstances surrounding defendant's convictions were set forth in detail in our prior order and we will recite only the facts necessary to resolve this appeal. The record reflects that, on February 13, 1999, Eric Johnson, Michael Johnson, Rebecca Wilkinson, Maria Rodriguez, Natalia Rodriguez, and Michelle Walker were staying in a hotel at a Howard Johnson in Aurora. At approximately 9:55 a.m., armed individuals entered the room, fired gunshots, and fatally wounded Eric Johnson. Michael Johnson, Wilkinson, and Natalia Rodriguez were also injured.

¶ 6 Following an investigation, law enforcement officials arrested Patrick Inocencio. Pursuant to a negotiated guilty plea, the trial court entered a judgment finding Inocencio guilty of one count of first-degree murder and three counts of aggravated battery with a firearm. The trial court sentenced Inocencio to a term of 32 years' imprisonment. Law enforcement officials also arrested and charged Melissa Sandoval. During her bench trial, Melissa testified that she, Inocencio, and defendant went into the hotel room when the shooting started. Melissa testified that defendant had a gun and was shooting in the room. The trial court found Melissa not guilty.

¶ 7 At defendant's trial, Monica Martinez testified that, on February 12, 1999, she went to a party on North Avenue in Aurora, where defendant and Inocencio were also present. Monica testified that Omar Delgado had rented a room at the Howard Johnson hotel, and they went there next. Monica testified that Melissa Sandoval drove her, Inocencio, Mike Torres, and Ruben Hernandez to the hotel, and that the males were members of the Almighty Latin Kings street gang. Monica Sandoval and Melissa Sandoval were members of the Almighty Latin Crew, a smaller group of people affiliated with the Almighty Latin Kings. After arriving at the hotel, Monica learned that members of the rival Ambrose gang were having a party on the same floor. At trial, Monica identified Inocencio and defendant as being at the Howard Johnson with her at various times during February 12 and 13.

¶ 8 Melissa Sandoval testified at defendant's trial. Melissa testified that, on the morning of February 13, 1999, defendant "had a weapon and was shooting" in the Howard Johnson hotel room. The State also called Inocencio, but he refused to answer any questions except to state his name. Inocencio refused to answer questions even after being granted immunity.

¶ 9 A jury found defendant guilty of first-degree murder, attempted first-degree murder, and home invasion. The trial court sentenced defendant to a term of 76 years' imprisonment, and we affirmed defendant's conviction.

¶ 10 On December 1, 2006, defendant filed a *pro se* petition for postconviction relief. As amended, defendant's petition alleged actual innocence, ineffective assistance of trial counsel, denial of due process and plain error, prosecutorial misconduct, ineffective assistance of appellate counsel, sentencing errors, and violations under the United States Constitution.

¶ 11 On September 30, 2010, the State filed a motion to dismiss defendant's petition. On December 19, 2012, the trial court entered an order denying the State's motion with respect to defendant's actual innocence claim and granting the State's motion with respect to all other claims.

¶ 12 On April 15, 2013, a hearing commenced on defendant's postconviction petition. Defendant first called Monica Garza (formerly Monica Martinez). During the evening hours of February 12, 1999, Garza was with Monica Sandoval and Melissa Sandoval. The three of them, along with Monica's boyfriend, went to a house party on North Avenue in Aurora. Garza testified that a lot of people were at the party, including Inocencio and Hernandez; however, defendant was not there. Sometime between 11 p.m. and 1 a.m., Garza, Monica Sandoval, and Melissa Sandoval left the party and went to a Howard Johnson hotel. When they arrived at the hotel, Omar Delgado and Mike Torres were already there. Garza testified that defendant was not at the Howard Johnson hotel that evening, and did not show up at any point. Garza slept at the hotel and left the morning of February 13th. Garza did not see defendant in the hotel at any point.

¶ 13 Inocencio testified that he had entered into a negotiated guilty plea for the murder at the Howard Johnson hotel and was serving 32 years in the Department of Corrections. Inocencio is a member of the Almighty Latin Kings and, in 1999, held the rank of “hood enforcer.” According to Inocencio, defendant did not hold a rank in the Almighty Latin Kings. Inocencio testified that Delgado was the “actual enforcer,” which meant that he was “the enforcer for the whole Aurora.” Inocencio had a tear drop tattoo under his left eye.

¶ 14 On February 12, 1999, Inocencio was at a house party in Aurora with Melissa Sandoval, Monica Martinez, Hernandez, Quentin Moore, and Torres. Defendant was not at the party. Inocencio left the party with Hernandez, Moore, Torres, Melissa Sandoval, and Monica Martinez to go to a Howard Johnson hotel, where Delgado had rented a room, and they arrived at the hotel in the early hours of February 13, 1999. Defendant did not go to the Howard Johnson. At approximately 9 a.m., Delgado told Inocencio that there was a party across the hall from Delgado’s room. Inocencio testified that he and Delgado “went over.” Inocencio and Delgado entered the room where the other party was being held, and Inocencio recognized Eric Johnson. Delgado started talking to Eric Johnson and Inocencio went back to the room that he was originally in. Delgado remained in the other room for “three to five minutes.”

¶ 15 Delgado returned to the original hotel room. Inocencio woke up Melissa Sandoval and told her that they had to leave. Moore had already left the hotel; and Inocencio, Delgado, Melissa Sandoval, Hernandez, and Torres all left together. Inocencio, Delgado, and Melissa Sandoval went to Inocencio’s home to pick up guns so they could “go back to the hotel and shoot that room up.” After retrieving the guns, Inocencio, Delgado, and Melissa Sandoval drove back to the hotel; Inocencio testified that defendant was not in the car.

¶ 16 Inocencio, Delgado, and Melissa Sandoval entered the hotel and went to the room where Eric Johnson was. Inocencio covered the door's peephole and knocked on the door. A female inside the room opened the room door "a little," Inocencio pushed the door in, and Inocencio and Delgado entered the room. Inocencio approached Eric Johnson, who was lying on a bed, and "shot him in the face." Inocencio shot another person in the back of her head and "ran out" of the room. Inocencio testified that Delgado shot people who were lying in the other bed. Inocencio testified that defendant was not with them when the shootings occurred.

¶ 17 Inocencio testified that, after the shooting, law enforcement officers placed him in custody. Inocencio provided a tape-recorded statement implicating defendant. Specifically, Inocencio told law enforcement officers that defendant was in Eric Johnson's hotel room prior to the shooting and that defendant knocked on the door before the victims were shot. Inocencio testified that those prior statements were not true. Inocencio testified that prior to his arrest, Delgado told him to place defendant "there" and that members of his gang had played a "part" in his determination to talk to law enforcement officers about defendant. Inocencio testified that he gave law enforcement officers false information regarding defendant firing shots at the hotel and false information regarding where defendant went after the shooting. Inocencio testified that he was a witness at Melissa Sandoval's trial, and at that trial, he did not specifically state that defendant was involved in the shooting. Inocencio testified that never told law enforcement officers that Delgado was the second shooter, and further, he never reached out to the State's Attorney's office to tell them that he had lied to law enforcement officers. Inocencio testified that he did not tell defendant's attorney that Delgado was the second shooter until a week and a half before the evidentiary hearing on defendant's postconviction petition because he "was still trying to protect him." Inocencio testified that he decided to identify Delgado as the second

shooter because defendant had been incarcerated for “14 years now for something that he didn’t do.” Inocencio testified that he was originally loyal to Delgado because defendant “was expendable.”

¶ 18 Teresa McAdams, who was defendant’s co-counsel during his trial, testified at the postconviction hearing. McAdams testified that Melissa Sandoval contacted her “years after” defendant’s trial to tell McAdams that she had been pressured to lie and wanted to change her testimony. McAdams clarified that, while Melissa Sandoval indicated that she had lied about defendant, she also indicated that she would not testify in court because she could be charged with perjury. McAdams never asked Melissa Sandoval whether Delgado was the second shooter.

¶ 19 Melissa Sandoval testified at the postconviction hearing. Prior to testifying, Melissa submitted an affidavit to McAdams averring that defendant “was in no way whatsoever involved in the shooting” and that her testimony at his trial was false. At the time of the postconviction evidentiary hearing, Melissa was serving a prison term in Wisconsin for a narcotics-manufacturing conviction. At the postconviction hearing, Melissa testified that defendant was at the Howard Johnson hotel. Upon further questioning regarding her affidavit, Melissa testified “I don’t recall who was [at the hotel].” Melissa testified that, at the time of the shooting, Inocencio pushed the hotel room door open and that another male was present, but Melissa refused to identify that other person. Melissa testified that she was fearful because her and her family have “gone through some things.”

¶ 20 Defendant testified at the evidentiary hearing that he was not at the party on North Avenue on February 12, 1999. Defendant testified that he was never at the Howard Johnson hotel in Aurora on February 13, 1999. Defendant testified that he did not participate in

Johnson's or Wilkerson's shooting, and further testified that Wilkerson was a friend of his that he had known since middle school. Defendant testified that, a few weeks after the shooting, he moved to Texas to live with an aunt and then to New Mexico to live with a cousin. Defendant maintained that he was not fleeing the state. Defendant was apprehended in New Mexico.

¶ 21 On May 6, 2013, the trial court denied defendant's postconviction petition. The trial court found that Garza's and Sandoval's testimony did not constitute newly discovered evidence because both witnesses were known witnesses prior to defendant's trial. Further, defendant's testimony did not constitute newly discovered evidence because he made a "knowing and voluntary" decision not testify at his trial.

¶ 22 Regarding Inocencio, the trial court found his testimony to be "incredible, untrustworthy, and unbelievable." The trial court noted that Inocencio testified that his loyalty to the Latin Kings gang was greater than the oath that he took to testify truthfully; and that he and defendant were friends and members of the Latin Kings. The trial court noted that Inocencio admitted on cross-examination that he had lied to the court in prior trials regarding the identity of the other shooter. The trial court emphasized that Inocencio waited over 14 years to tell anyone that defendant was not the shooter. Finally, the trial court found that Inocencio's demeanor while testifying "undercut his credibility."

¶ 23 In the alternative, the trial court considered Garza's, Sandoval's, and defendant's testimony as newly discovered evidence. The trial court found each of their testimony to be "incredible, untrustworthy, and unbelievable." Specifically, the trial court noted that Melissa Sandoval testified at her own trial that defendant and Inocencio were involved in the shooting, and further, during the postconviction evidentiary hearing, Melissa never testified that defendant was not one of the two shooters. The trial court also noted that Melissa was a convicted felon.

With respect to Garza, the trial court found that she was an “admitted liar,” noting that she must have lied under oath at both Melissa Sandoval’s and defendant’s trials about defendant being involved in the shooting. The trial court also rejected Garza’s reason for coming forth now about the circumstances of the shooting, *i.e.*, that she had lived with guilt since 1999. The trial court noted that Garza had numerous prior opportunities to come forward about the circumstances of the shooting.

¶ 24 Defendant timely appealed.

¶ 25

II. ANALYSIS

¶ 26 Defendant’s only contention on appeal is that the trial court’s determination to deny his postconviction petition at the third stage was contrary to the manifest weight of the evidence.

¶ 27 The Act provides a statutory remedy to criminal defendants who claim that substantial violations of their constitutional rights occurred at trial. *People v. Edwards*, 2012 IL 111711, ¶ 21. The Act, however, is not a substitute to an appeal, “but rather, is a collateral attack on a final judgment.” *Id.* With the exception of cases where the death penalty has been imposed, proceedings under the Act are divided into three stages. *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). At the first stage, the trial court has 90 days to examine the petition and can summarily dismiss the petition if it is frivolous or patently without merit; however, the petition must only state the gist of a constitutional claim to survive summary dismissal. *Id.* If the petition survives the first stage, an indigent defendant is appointed counsel, the petition may be amended, and the State can move to dismiss the petition. *Id.* Dismissal at the second stage is proper if the petition, liberally construed in light of the trial record, fails to make a substantial showing of a constitutional violation. *Id.* At the third stage, a defendant may present evidence at a hearing. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2007).

¶ 28 “Throughout the second and third stages of a postconviction proceeding, the defendant bears the burden of making a substantial showing of a constitutional violation.” *Id.* When a petition advances to the third stage, and fact-finding and credibility determinations are involved, a reviewing court will not reverse unless the trial court’s findings were manifestly erroneous. *People v. Taylor*, 237 Ill. 2d 356, 373 (2010). Manifest error is error which is clearly evident, plain, and indisputable. *People v. Morgan*, 212 Ill. 2d 148, 155 (2004).

¶ 29 In this case, the trial court’s determination to deny defendant’s postconviction petition at the third stage was not against the manifest weight of the evidence. The trial court was in the “uniquely appropriate” position to make credibility determinations. *People v. Coleman*, 2013 IL 113307, ¶ 97. At defendant’s trial, Garza testified that defendant was at both the party on North Avenue and at the Howard Johnson at various times during February 12 and 13. Melissa Sandoval testified at defendant’s trial that he possessed a weapon and was involved in the shooting. At the evidentiary hearing on defendant’s postconviction petition, both witnesses appeared to recant their trial testimony. Specifically, Garza testified that she did not see defendant at the Howard Johnson. Melissa averred in an affidavit that defendant was not involved in the shooting, but testified at the postconviction evidentiary hearing that she could not recall who was at the hotel. As a general rule, “recantations are deemed highly unreliable” (see *People v. McDonald*, 405 Ill. App. 3d 131, 137 (2010)), and credibility determinations regarding the veracity of Garza’s and Melissa Sandoval’s testimony was for the trial court to make, and we have no basis in the record before us for second-guessing its judgment (see *Morgan*, 212 Ill. 2d at 162).

¶ 30 Likewise, it was within the purview of the trial court to assess Inocencio’s testimony. At the evidentiary hearing on defendant’s postconviction petition, Inocencio testified that Delgado

was the other shooter, not defendant, and that he was loyal to Delgado because defendant was expendable. However, as the trial court noted, Inocencio admitted to lying in prior trials regarding the identity of the other shooter, and further, Inocencio waited over 14 years to come forward with his story that defendant was not the other shooter. Again, it was for the trial court to assess Inocencio's credibility and we see no basis in the record for second-guessing its judgment. See *id.*

¶ 31 Defendant's reliance on our supreme court's decision in *Coleman* is unpersuasive. In that case, our supreme court reversed the appellate court, which had affirmed a trial court's decision to deny the defendant's petition for postconviction relief following an evidentiary hearing. *Coleman*, 2013 IL 113307, ¶ 113. The defendant had been convicted of home invasion, aggravated criminal sexual assault, armed robbery, and residential burglary. *Id.* ¶ 43. At trial, three witnesses, two victims and another person involved in the home invasion, identified the defendant. *Id.* ¶¶ 12, 24, 31. A detective also testified regarding the investigation. *Id.* ¶¶ 33-34. The defendant presented four witnesses: a person who pleaded guilty after the home invasion and attack, Anthony Brooks, who testified that defendant was not present; two alibi witnesses; and his own testimony that he was not involved in the home invasion or attack. *Id.* ¶¶ 35-41. A jury found him guilty. *Id.* ¶ 43. The defendant filed a posttrial motion, arguing that the State failed to prove him guilty beyond a reasonable doubt and the trial court held a hearing on that motion. *Id.* At the hearing, another witness who was involved in the home invasion and attack, James Coats, testified that defendant was not there. *Id.* ¶ 44.

¶ 32 The defendant filed a successive postconviction petition claiming actual innocence. *Id.* ¶ 47. The petition was supported by affidavits from Brooks, Coats, and a number of other individuals who did not testify at trial. *Id.* ¶ 49. At an evidentiary hearing on the petition, Coats

again testified that the defendant was not involved in the home invasion or the attack and Brooks recanted his trial testimony. *Id.* ¶ 52, 63. The other witnesses, some of whom were involved in or present for the attack, also testified that the defendant was not present when the crimes were committed. *Id.* ¶¶ 56-74. The trial court denied the defendant's petition after concluding that some of the witnesses had extensive criminal backgrounds and that they gave conflicting accounts regarding the home invasion and attack. *Id.* ¶ 77. The appellate court affirmed, finding that the trial court's determination was not against the manifest weight of the evidence. *Id.* ¶ 78.

¶ 33 In reviewing the defendant's actual innocence claim, our supreme court reiterated that, pursuant to *People v. Washington*, 171 Ill. 2d 475 (1996), the defendant must present new, material, and noncumulative evidence "that is so conclusive that it would probably change the result on retrial." *Coleman*, 2013 IL 113307, ¶ 96. The *Coleman* court explained that "[p]robability, not certainty, is the key as the trial court in effect predicts what another jury would likely do, considering all of the evidence, both new and old, together." *Id.* ¶ 97.

¶ 34 Thereafter, the supreme court concluded that, while Brooks recanted testimony was not material, the testimony of five witnesses, including Coats, who were involved in or present for the attack constituted new, material, and noncumulative evidence. *Id.* ¶ 107. Further, the supreme court concluded that the trial court's decision that the new evidence was "not conclusive enough to probably change the result at retrial" was against the manifest weight of the evidence. *Id.* ¶¶ 104, 113. In reaching this determination, the supreme court noted that the testimony from the five witnesses, was "remarkably consistent" on key details, including who was present for and involved in the attack, even though the witnesses' credibility on retrial would be affected by their criminal backgrounds. *Id.* ¶ 106. In addition, the remaining identifications at trial (Brooks

recanted his identification) had been “significantly impeached.” *Id.* ¶ 109. Thus, the witnesses at the postconviction hearing directly contradicted the State’s trial witnesses on the ultimate issue before the jury: “who was involved in the attack.” *Id.* ¶ 113. As a result, the supreme court opined “the evidence presented by the defendant at the evidentiary hearing, together with the evidence presented by the defendant at trial, places the evidence presented by the State in a new light and undermines our confidence in that evidence and the result that it produced.” *Id.* The *Coleman* Court concluded that the trial court’s decision to deny the defendant’s postconviction petition following an evidentiary hearing was manifestly erroneous and remanded for a new trial. *Id.* ¶ 114.

¶ 35 While we are cognizant of the similarities between *Coleman* and this case, *i.e.*, both matters involve a postconviction petition with witnesses testifying at the evidentiary hearing that a defendant was not involved in a crime for which he was convicted, we believe that they are distinguishable. Significantly, in *Coleman*, the newly discovered evidence did not involve recanted trial testimony. While Brooks recanted his trial testimony, the supreme court concluded that it was not material. *Id.* ¶ 101. Thus, the new, material, and noncumulative evidence in *Coleman* consisted entirely of testimony from five witnesses who were not seeking to recant their prior trial testimony, but instead, would testify during retrial for the first time. Conversely, here, a significant portion of the testimony at the postconviction evidentiary hearing consisted of Garza and Sandoval recanting on their trial testimony; and we further note that Sandoval’s recanted testimony is also inconsistent with the testimony she gave during her first trial. “The recantation of testimony is regarded as inherently unreliable. As a result, *** courts will not grant a new trial on that basis except in extraordinary circumstances.” *Morgan*, 212 Ill. 2d at 155. Further, unlike *Coleman*, defendant here fled the jurisdiction and was ultimately

apprehended in New Mexico, which a trier of fact may consider when determining guilt. See *People v. Reid*, 136 Ill. 2d 27, 61 (1990).

¶ 36 In sum, the trial court observed Garza's and Melissa Sandoval's contradictory testimony, as well as Inocencio's and defendant's testimony. Our deference to the trial court "is grounded in the reality that [it] is in a superior position to determine and weigh the credibility of witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony.' " *People v. English*, 406 Ill. App. 3d 943, 953-54 (2010) (quoting *People v. Pitman*, 211 Ill. 2d 502, 512 (2004)). The trial court's ruling was based almost exclusively on the credibility of the witnesses, and we decline to find that its finding was against the manifest weight of the evidence. See *English*, 406 Ill. App. 3d at 954.

¶ 37

III. CONCLUSION

¶ 38 For the reasons stated, we affirm the judgment of the circuit court of Kane County.