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2015 IL App (3d) 130151-U

Order filed February 20, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0151
JASON L. SHELTON,)	Circuit No. 97-CF-474
Defendant-Appellant.)	Honorable Clark E. Erickson, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and Carter concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in denying the defendant's motion for DNA testing.

¶ 2 The defendant, Jason L. Shelton, was found guilty of two counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 1996)) and concealment of a homicidal death (720 ILCS 5/9-3.1(a) (West 1996)). The defendant appeals from the denial of his motion for DNA testing. On appeal, the defendant argues that the trial court erred in denying his motion for DNA testing,

where the evidence sought to be tested had the potential to produce new, noncumulative evidence that is materially relevant to the defendant's claim of actual innocence. We affirm.

¶ 3

FACTS

¶ 4

The defendant was charged by indictment with two counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 1996)) and concealment of a homicidal death (720 ILCS 5/9-3.1(a) (West 1996)). The charges alleged that the defendant and Quincy Jones strangled the victim, Elijah Thomas, and placed his body in a garbage dumpster. The case proceeded to a bench trial.

¶ 5

The evidence at trial showed that police recovered a partially burned body from a garbage dumpster at 1320 East Chestnut Street in Kankakee, Illinois, on May 29, 1997. The body was located underneath some garbage bags and a black, partially scorched shoe lay on top of the body. A second, unscorched shoe was found at the bottom of the dumpster. The victim's head was covered with a black plastic bag, and a brown extension cord was wrapped around the victim's neck. The body was wrapped in a white sheet with a floral print.

¶ 6

When the body was removed from the garbage dumpster, Kankakee police officer Lamont Upton heard Melvin Tate, a person at the scene, identify the victim as "Cokey" or "Cokley One." Tate said the victim wore the same clothes and shoes the day before.

¶ 7

Donnella Jones testified that she lived at 1350 East Chestnut Street in Kankakee. Donnella shared the house with her sister, Lakesha Jones; Lakesha's boyfriend, the defendant; her brother, Quincy; and Quincy's girlfriend, Eddice Hollins. At the time, Donnella was in a relationship with the victim, who was also staying at the house. The victim's nickname was "Cokey." On May 28, 1997, Donnella invited several people over to watch a Chicago Bulls game. That night, Donnella did not recall hearing anyone accuse the victim of taking money,

and she did not witness the victim's beating or observe any of the victim's injuries. Donnella remembered seeing the victim leave the house with a shotgun, accompanied by John Logan. Donnella recalled that the week before the murder, Tate had fired some gunshots at the victim because the victim was "pitching pennies" in front of Tate's residence. After the victim's body was found, Donnella allowed the police to search her house. The police found packages of hot dogs and black plastic garbage bags.

¶ 8 Donnella's testimony was impeached with her August 1997 statement to the police. In the statement, Donnella said that the victim and Logan "did some stuff" and then she fell asleep on the couch. When Donnella awoke, Hollins said the victim stole her money. Lakesha found money in the victim's pants pocket and right sock while the victim was feigning sleep in a bedroom. Donnella left the room and heard the defendant hitting the victim. When the door opened, Donnella saw "knots" on the victim's face. Donnella also heard the defendant ask for some rope. When the defendant and Quincy came downstairs, Donnella noted that the defendant "had a look in his eye, like he killed someone." Donnella also stated that she had a pending Class X felony charge for possession of cocaine and a pending case with the Department of Children and Family Services.

¶ 9 Hollins testified that she lived at 1350 Chestnut Street with Lakesha, Donnella, Quincy, and the defendant. On the night of May 28, 1997, Hollins and several other people were smoking marijuana and drinking alcohol. At some point, Hollins noticed that \$800 was missing from under her mattress. The defendant and the victim denied taking the money so Hollins went outside to look for the money. When Hollins came back into the house, she heard Quincy say "nobody going to leave the room until I find the money." Hollins noticed a bulge in the victim's sock while the victim was lying on the floor. Hollins thought that the victim was lying on the

floor because he had been drinking. Lakesha took the money out of the victim's sock, and Hollins went downstairs. Thereafter, Hollins saw the defendant, Lakesha, and Quincy carry the victim down the stairs toward the back door. The victim was covered with a white sheet with a flower design. The sheet had been removed from Hollins' bed.

¶ 10 Hollins stated that she had two prior convictions for retail theft and a pending case for taking drugs to Quincy while he was imprisoned in the county jail. Hollins also admitted that she had lied at Quincy's trial.

¶ 11 Lakesha Jones testified after the trial court granted her immunity. Lakesha stated that on May 28, 1997, several people were at the house watching the Bulls game, drinking alcohol, and smoking marijuana. Lakesha did not recall anything unusual happening after the game ended, and she denied making a statement to the police.

¶ 12 The State impeached Lakesha with her August 6, 1997, statement to the police. In the statement, Lakesha reported that she was arguing with the defendant outside the house when Hollins and Quincy asked if the defendant had stolen their money. When the defendant said no, Hollins and Quincy said that the victim must have taken the money. The defendant and Lakesha followed Hollins and Quincy back into the house. Quincy told the defendant and the victim to go to his bedroom. Quincy said "if the money didn't turn up, [the defendant and victim] could not leave the room." In the bedroom, Lakesha patted the victim's pockets and found \$100. Lakesha also noticed a bulge in the victim's sock, which contained \$700. After the discovery, Quincy told Hollins and Donnell to leave the room. At the time, the victim was feigning sleep on the floor. The defendant hit the victim, leaving a knot on the victim's head. Lakesha thought that the defendant hit the victim harder than he had intended, and Lakesha feared

retribution. However, while the victim was on the ground, Lakesha hit him in the side, and Quincy told Lakesha to get a black plastic bag from the kitchen.

¶ 13 According to Lakesha's statement, the defendant placed the bag over the victim's head and wrapped the victim in a white sheet with colors on it. The defendant and Quincy carried the victim down the stairs to a nearby dumpster. Lakesha carried one of the victim's shoes to the dumpster. Later, the defendant and Quincy took some garbage to the dumpster. Lakesha told Hollins and Donnella what had happened and noted that if she, Quincy, and the defendant had not have acted, the victim would have "come back and killed us." Quincy and the defendant told Lakesha that they set the victim's body on fire while he was in the dumpster.

¶ 14 Illinois State Police forensic scientist Julie Glasner testified that she received 10 fingernail clippings from the victim sent by the Kankakee police department for analysis. Nine of the clippings yielded human DNA. However, the results of her analysis were inconclusive because her control tests did not return the expected results. Glasner explained that controls were used to make sure that the results were reliable and, in this case, the control was not clean enough to conduct a proper analysis.

¶ 15 John Sapala performed the autopsy on the victim. Sapala observed an edema on the victim's head and eye, and bruising over the eyes, ears, and other areas of the head. The number and size of the injuries indicated that the victim had suffered blunt trauma to the head. Sapala also observed bruising to the abdominal wall and left diaphragm. Sapala did not observe any evidence of offensive or defensive wounds to the victim's hands. Sapala opined that the victim's injuries indicated that there was probably a struggle, and fluid in the victim's lungs was consistent with strangulation or suffocation. Bruising around the windpipe further indicated that the victim suffered manual strangulation by ligature, and the victim's body was subject to

postmortem burning. The victim's stomach contents contained fragments of hot dogs, and, at the time of death, the victim's blood alcohol content was 0.112. Sapala concluded that the victim died from suffocation, strangulation, and blunt cranial cerebral trauma.

¶ 16 Illinois State Police forensic scientist Wilburn Wilkins testified that he conducted fingerprint analysis on the physical evidence. The only prints suitable for comparison were taken from a plastic bag in evidence. The fingerprint comparison did not match the defendant and were inconclusive as to Tate.

¶ 17 The defense called Monique Jones to testify as its first witness. Jones stated that on the night of the incident, she lived at 1350 East Chestnut Street in Kankakee. After the Bulls game ended, the victim left the house and did not return. Monique also remembered that she helped look for some money that went missing.

¶ 18 Logan testified that on May 28, 1997, between 10:30 and 11 p.m., the victim flagged Logan down for a ride while he was on East Chestnut Street. The victim told Logan that his friend needed a ride. Logan drove the victim and his friend to the drop-off location, and then drove the victim back to East Chestnut Street. During the drive, the victim told Logan that he was having trouble with "some guys around the corner." The victim also said that he carried a pager and referred to an individual named "Pantrall."

¶ 19 Nikkeyma Hunt testified that Logan borrowed her car on May 28, 1997. When Logan returned, he was accompanied by the victim and a girl named Venus. Hunt got into the car, and the group drove to Venus' drop-off location. Then Hunt, Logan, and the defendant drove back to Chestnut Street, where the victim got out of the car at approximately 11:45 p.m. The victim told Hunt that he was involved in a dispute with his neighbors over drugs, a pager, and a "9."

¶ 20 Kankakee County Sheriff's Deputy Derek Ryan testified that he was working at the scene when the victim's body was removed from the dumpster. Ryan overheard Tate identify the body as the victim. Tate recognized the victim by his shoes. Ryan also spoke with an individual named "Juice" regarding a dispute between the victim and Tate. "Juice" said that the victim had stolen a few thousand dollars and drugs from Tate.

¶ 21 The court found the defendant guilty of all three counts. The court merged the murder convictions and entered a single sentence of 50 years' imprisonment, and it imposed a concurrent term of 5 years' imprisonment for concealment of a homicidal death. On appeal, we affirmed the defendant's convictions and sentences. *People v. Shelton*, No 3-98-0317 (2000) (unpublished order under Supreme Court Rule 23).

¶ 22 On February 13, 2001, the defendant filed a motion for DNA testing. The court denied the motion. On appeal, we affirmed the trial court's denial, finding that the defendant had not alleged that the DNA tests he was seeking were unavailable at the time of the trial. *People v. Shelton*, 351 Ill. App. 3d 292 (2004).

¶ 23 On November 3, 2007, the defendant filed a postconviction petition arguing that a Freedom of Information Act request had revealed that a second DNA test had been performed on the victim's fingernail scrapings. The petition advanced to an evidentiary hearing. At the hearing, Glasner testified that no additional DNA testing had been conducted on the evidence recovered from the victim's body, but blood samples from the defendant and Quincy were sent to Cellmark Forensics' laboratories to obtain DNA profiles that were entered into the combined DNA indexing system.

¶ 24 Glasner also testified that Cellmark had used Short Tandem Repeat (STR) analysis, a newer and more advanced analysis method to analyze the DNA. The DNA recovered from the

victim's fingernails had originally been analyzed using Polymerase Chain Reaction, and the samples could be retested using the newer STR analysis. From Glasner's testimony, the defendant asked to amend his petition to include a request for DNA testing.

¶ 25 The court denied the defendant's postconviction petition, but granted the defendant leave to file a motion for DNA testing.

¶ 26 On December 29, 2011, the defendant filed a motion for DNA testing. The trial court denied the defendant's motion, finding that retesting the DNA found beneath the victim's fingernails would not advance the defendant's claim of actual innocence. The defendant appeals.

¶ 27 ANALYSIS

¶ 28 The defendant argues that the trial court erred in denying his motion for DNA testing because the DNA evidence found under the victim's fingernails had the potential to produce new, noncumulative evidence that is materially relevant to his assertion of actual innocence. We review *de novo* the trial court's denial of a motion for DNA testing. *People v. O'Connell*, 227 Ill. 2d 31, 35 (2007).

¶ 29 Section 116-3(a) states that following a trial resulting in defendant's conviction, a defendant may make a motion before the trial court for forensic DNA testing on evidence secured in relation to the trial that:

"(1) was not subject to the testing which is now requested at the time of trial; or

(2) although previously subjected to testing, can be subjected to additional testing utilizing a method that was not scientifically available at time of trial that provides a reasonable likelihood of more probative results." 725 ILCS 5/116-3(a)(1), (2) (West 2010).

¶ 30 After a defendant has established a *prima facie* case, the court must assess the likelihood that the results of the testing would materially advance the defendant's claim of actual innocence. *People v. Stoecker*, 2014 IL 115756, ¶ 26. This assessment requires an evaluation of the trial evidence to determine whether the testing is likely to produce "new, noncumulative evidence materially relevant to the defendant's claim of actual innocence." *Id.*; 725 ILCS 5/116-3(c)(1) (West 2010). Materially relevant evidence tends to significantly advance the defendant's claim of actual innocence. *People v. Savory*, 197 Ill. 2d 203, 213 (2001). A determination of whether the evidence is materially relevant requires consideration of the evidence introduced at trial, as well as an assessment of the evidence the defendant is seeking to test. *Id.* at 214.

¶ 31 The defendant contends that retesting the DNA recovered from the victim's fingernails has the scientific potential to produce new, noncumulative evidence materially relevant to his claim of actual innocence. We disagree. Initially, we note that the trial evidence established that the defendant participated in a group beating of the victim, assisted in carrying the victim's body out of the house, and helped place and conceal the victim's body in a dumpster. Although much of this evidence was based on prior inconsistent statements of impeached witnesses (Ill. R. Evid. 613 (eff. Jan. 6, 2015)), the prior statements were consistent with each other and Sapala's determination of the cause of death. Additionally, the victim's stomach contents, a plastic bag over the victim's head, and a sheet wrapped around the body gave rise to the inference that the murder occurred at the house on 1350 East Chestnut Street. Further evidence established that the defendant and the victim were at the house on the night of the murder and a dispute arose when the victim was found with money that had previously gone missing.

¶ 32 The defendant argues that the DNA found under the victim's fingernails would further his actual innocence claim because it was consistent with Sapala's testimony that there was a

struggle prior to the victim's death. Presuming the victim acquired the DNA during the struggle and the testing identified Tate as the contributor—an individual with whom the victim had a preexisting dispute—defendant contends the DNA evidence would materially advance his claim of actual innocence. While a DNA match to Tate could inculpate another party in the murder, it does not refute the remaining evidence. In contrast to a sexual assault case where the presence of an offender's DNA is strongly inculpatory, the presence of another party's DNA in the present case does not exonerate a defendant who was present at the time of the murder and was observed beating the victim and carrying a body out of the house. See *People v. Hockenberry*, 316 Ill. App. 3d 752 (2000) (DNA testing on semen recovered on vaginal swabs had the potential to produce evidence materially relevant to the defendant's claim of actual innocence of aggravated criminal sexual assault). Additionally, a DNA match, whether to the defendant or another individual, would not conclusively establish that the matching individual committed the murder. Such evidence would only indicate that the contributor had an altercation or close contact with the victim at some point before the murder. Thus, retesting of the DNA found under the victim's fingernails would not materially advance the defendant's claim of actual innocence. The trial court did not err in denying the defendant's motion for DNA testing.

¶ 33

CONCLUSION

¶ 34

The judgment of the circuit court of Kankakee County is affirmed.

¶ 35

Affirmed.