

No. 1-13-3872

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 04 CR 13399
	)	
IRVING MADDEN,	)	Honorable
	)	Joseph G. Kazmierski, Jr.,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE GORDON delivered the judgment of the court.  
Presiding Justice Reyes and Justice Harris concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Summary dismissal of defendant's *pro se* postconviction petition was proper where codefendant's affidavit supporting defendant's actual innocence claim was not arguably of a conclusive nature.

¶ 2 Following a jury trial, defendant Irving Madden was found guilty of first-degree murder and attempted murder and sentenced to a 30-year sentence for murder with a consecutive 25-year enhancement based upon his use of a firearm, and a consecutive 20-year sentence for attempted murder also with a consecutive 25-year enhancement based upon his use of a firearm. Defendant subsequently filed a *pro se* petition under the Post-Conviction Hearing Act (Act) (725 ILCS

5/122-1 *et seq.* (West 2012)), which the trial court summarily dismissed. On appeal, defendant contends that the dismissal of his actual innocence claim was improper because it was supported by the affidavit of his codefendant which arguably set forth evidence that was newly discovered, material, non-cumulative, and of a conclusive nature. We affirm.

¶ 3 The evidence at trial established that on April 26, 2004, Antoinette Woods and Hamid Shahande drove to defendant's residence. According to Woods, Shahande planned to sell heroin to defendant, as well as sell back a gold chain which defendant had previously pawned. Woods did not observe Shahande with any weapon, though she knew he frequently carried a pocket knife. When they arrived at defendant's residence, Monique Hampton, defendant's girlfriend and codefendant, came outside to speak with Shahande. She stated that she needed to collect money from a friend before the purchase could be made. Hampton and defendant entered the vehicle's rear seats. Defendant directed Woods to drive to a nearby alley and stop. Once they had stopped, Hampton asked to borrow Shahande's telephone. As Shahande handed his phone back to Hampton, Woods heard a gunshot and observed a flash close to her. Woods ducked down, put a hand over her head, and began to drive down the alley. She was then shot in her hand and her head. Defendant reached forward and placed the vehicle in park. He twisted Woods's head and neck, tangling her in her seatbelt. Defendant exited the vehicle, approached the driver's side door, and attempted to pull Woods from the vehicle. He struck her in the face with his gun. According to Woods, Hampton then stated, "Kill her, bay, kill her. You know we can't leave no witnesses." Defendant responded, "She ain't gonna tell, she ain't gonna tell. This bitch ain't gonna tell." During the shooting, Woods's neck was broken, leaving her partially paralyzed. At trial, Woods denied attacking Hampton or defendant with a steak knife. On cross-examination, she testified

that the steak knife recovered from the vehicle by investigators had been broken prior to the day of the shooting. On cross-examination, she was impeached by statements she made in an earlier deposition, where she stated the knife had not been broken before the shooting.

¶ 4 A man driving through the alley later found Woods with a bloodied face slumped in the front seat of the parked vehicle. According to the man, he left the alley and alerted nearby police officers.

¶ 5 Chicago police detectives David Deja and Robert Cordero were assigned to investigate the shooting. According to Deja, when the detectives arrived they found Shahande dead in the vehicle's passenger seat and Woods in an ambulance. Deja interviewed Woods before she was transported to the hospital. According to Deja, Woods stated that she and Shahande had driven to the house of a person she knew as "Nobe" or "Noble" to sell drugs. Noble had shot her and Shahande. His girlfriend was also present at the shooting. Woods then described the physical appearance of Noble and his girlfriend and shared Noble's home address. She also told Deja that Noble was on house arrest and was on some form of home monitoring. She later identified defendant and Hampton in a photo array.

¶ 6 Following the conversation with Woods, Deja and other officers proceeded to defendant's residence where they discovered bloodstains throughout the home. According to Deja, he and Cordero then went to West Suburban Hospital where they found Hampton, who had been admitted, and defendant. The officers arrested defendant and seized several items including bloody paper towels. They then spoke with Hampton, who agreed to accompany them back to the police station for an interview. At the station, the police officers searched defendant and

found \$580 in cash; according to Deja, this included a dollar bill with a red stain. Officers also seized both Hampton's and defendant's clothes.

¶ 7 According to Cordero, defendant initially agreed to speak with him, but denied involvement in the homicide. Cordero told defendant that Hampton was in custody and that Woods had identified defendant as the shooter. Cordero questioned defendant again one hour later, and a third time an hour after that. During the third questioning, defendant stated that he regularly purchased drugs from Shahande and had arranged to purchase heroin that evening. Recently, Shahande had been increasing the price of heroin and lowering its quality. In addition, defendant had pawned a gold chain to Shahande, and when defendant attempted to repurchase the chain, Shahande doubled its price. Defendant stated that he, Hampton, Woods, and Shahande had an argument outside of his home on the night of the shooting. They entered the vehicle to avoid disturbing the neighborhood and Woods drove into the alley, where defendant shot Shahande in the head. After mentioning the shooting, defendant grew emotional and officers stopped the interview.

¶ 8 Cordero resumed questioning defendant shortly thereafter. Defendant stated that when Shahande arrived the night of the shooting, defendant sent Hampton to conduct the drug transaction. She returned to defendant and claimed that "she was disrespected by [Shahande]." An argument ensued and defendant asked everyone present to enter the vehicle to avoid a disturbance. Woods parked the vehicle in a nearby alley where she and Hampton continued to argue. Defendant stated that he feared Shahande because of his gang connections and because Shahande pointed at him and demanded payment for prior drug transactions. According to Cordero, defendant stated that the women continued to argue and he eventually "couldn't take it

anymore," so he pulled out a gun and shot Shahande in the back of the head. After defendant shot Shahande, Woods "turned and went for [defendant]" and he shot her as well. Defendant and Hampton then left and returned to his residence. At the time, defendant was on home monitoring for a prior offense. He contacted the Illinois Department of Corrections to explain that he was taking Hampton to a hospital due to pregnancy complications. He went upstairs to change clothes, but returned to find Hampton and the firearm were missing. He found her at her aunt's home and called his father to drive them to the hospital. During the drive, he asked his father to get rid of their jackets.

¶ 9 A trace evidence analyst for the Illinois State Police tested defendant's sweatshirt and found that its right sleeve was positive for the presence of gunshot residue, which was consistent with the shirt's wearer having fired a gun with his right hand. According to stipulations by the parties, DNA experts found that paper towels seized from Hampton's hotel room, Hampton's pants, and swabs from defendant's home all contained Woods's blood. A forensic investigator found a fingerprint on the exterior of Woods's vehicle, and testing indicated it belonged to defendant. The investigator also recovered three bullet casings, a fired bullet next to the vehicle's front-passenger seat, a steak knife handle from the floor beneath the driver's seat, and a steak knife blade from the rear of the vehicle. The doctor who performed Shahande's autopsy found a fired bullet in Shahande's skull. According to a firearms expert, the recovered bullets were fired from a single firearm and the recovered casings were fired from a single firearm. She could not, however, determine if the bullets and casings were fired by the same firearm. Shahande's phone records indicated that he had received multiple calls from defendant's home on the night of the shooting.

¶ 10 Defendant presented the testimony of his grandmother at trial. She testified that defendant and Hampton lived in the basement of her home. In late March or early April of 2004, a window was broken in the basement apartment and Simpson did not know who broke the window.

¶ 11 Defendant also testified. According to defendant, he borrowed money from Shahande to repay a debt to his father approximately two weeks before the shooting. He gave Shahande a gold necklace with a cross as security. When defendant received some money, he went to Shahande's house to repay the loan. Woods answered the door and defendant observed four men inside the house standing behind her. Defendant could hear Shahande screaming, and after a brief conversation with Woods, defendant quickly left the premises. Defendant testified that he was concerned about his safety due to this encounter and because he believed Shahande had broken his bedroom window.

¶ 12 On April 26, 2004, defendant asked Hampton to call Shahande and then meet him outside to repay the loan and retrieve the necklace. After several minutes, defendant heard screaming and yelling. Hampton said, "Get your hands off me" and Shahande demanded to speak with defendant. Having previously seen Shahande with a firearm, defendant armed himself with a handgun and exited his room. Shahande and Hampton were "wrestling." Defendant broke up the fight and Hampton handed him the money and the necklace's gold chain. Defendant and Shahande began to argue about the missing cross and the amount of money that defendant owed. At one point, Shahande reached his hand into his pocket and appeared to be holding a gun. Both defendant and Hampton then put their hands up and again asked for the missing cross to be returned. Shahande stated that the cross was in his vehicle. Woods, who had been standing

nearby, led everyone to the vehicle. Woods sat in the driver seat, Shahande sat in the front passenger seat, and Hampton and defendant sat in the rear. When Woods began to drive, defendant protested that he could not travel far because he was on house monitoring. He panicked and felt scared. Defendant believed that Shahande's heroin supplier was waiting in the alley.

¶ 13 As the vehicle drove down the alley, Hampton jumped towards the front seat and placed the vehicle in park. Woods and Shahande grabbed her and attempted to pull her into the front seat. Hampton jumped forward a second time and grabbed the keys from the vehicle's ignition. Shahande continued to try to pull Hampton's upper body into the front seat with his left hand. Defendant testified that he then shot Shahande because he observed something in Shahande's left hand, though he "didn't know what it was," and he believed that Shahande was going to shoot her. After defendant shot Shahande, Woods continued to grab at Hampton, and Hampton attempted to strike Woods with the vehicle's keys. Defendant then heard Hampton say, "She got a knife. Help me." Seeing the knife in Woods's hand, defendant shot at the weapon. After the gunshot, he was able to pull Hampton into the backseat. He fired towards Woods again. Defendant and Hampton both exited the vehicle and Hampton continued to fight with Woods. Defendant grabbed Woods around the neck to stop the fighting and threw her against the vehicle. Hampton directed defendant to shoot Woods; however, defendant chose not to and instead left the scene. He returned home and Hampton told defendant that she was having miscarriage symptoms. Defendant then contacted his parole agency to notify them that there had been an accident and the agency granted defendant permission to take Hampton to the hospital.

¶ 14 Eventually, police officers arrested defendant but he refused to talk about the shooting. He did, however, tell the officers that he had purchased drugs from Shahande previously, and that Shahande had recently sold defendant some bad drugs or overcharged defendant. According to defendant, the officers took this information and manipulated it in their reports and testimony so that it would appear as if defendant was talking about the night of the shooting. Defendant also testified that he requested an attorney “[e]very ten seconds.” The police, however, would not let him contact an attorney or his family. At some point, he had a conversation with an assistant State's Attorney at the police station. The attorney requested defendant to sign a statement or film a confession; however, defendant continued to ask for an attorney. Eventually, defendant received permission to contact a family member who then sent an attorney to the police station. During his testimony, defendant admitted that he had a previous felony conviction for armed robbery.

¶ 15 The State called Assistant State's Attorney Veryl Gambino and Detective Cordero in rebuttal. Gambino testified that she met with defendant and Detective Cordero on the morning of April 27, 2004. After she advised defendant of his *Miranda* rights, defendant admitted that he shot the victims and did not request an attorney. She met with defendant a second time, admonished him, and he again agreed to speak with her without requesting an attorney. Prior to making a statement, defendant asked to speak with his family and called his family after this second questioning. Defendant detailed making arrangements to meet with Shahande, arguing with Shahande, and entering into Woods's vehicle to avoid a commotion. He described shooting Shahande in the back of the head after Shahande demanded more money and threatened to kill defendant and his family if the loan was not repaid within 24 hours. When Woods attempted to



help Shahande, defendant shot her twice. Defendant and Hampton then fled the scene. According to Gambino, defendant did not state anything about prior threats or fears, nor about any physical fighting between the parties. After the interview, defendant chose to have his statement videotaped, but changed his mind after speaking with an attorney.

¶ 16 Detective Cordero testified that defendant was willing to speak with officers and did not request an attorney throughout the various questionings. Gambino was present during the fourth and fifth interviews, and at the conclusion of the fifth, defendant agreed to make a videotaped statement. Eventually an attorney arrived and spoke with defendant. Subsequently, defendant refused to memorialize his statement. According to Cordero, defendant said nothing during any of these interviews about prior disputes with Shahande before the night of the shooting incident.

¶ 17 The jury found defendant guilty of first-degree murder and attempted murder, and also found that defendant had personally discharged a firearm causing Shahande's death and great bodily harm or disability to Woods. The trial court sentenced defendant to an enhanced 55 years' imprisonment for murder and a consecutive enhanced term of 45 years for attempted murder. On direct appeal, defendant argued, *inter alia*, that the trial court improperly excluded evidence of his mental state, improperly allowed the admission of defendant's previous armed robbery conviction for impeachment purposes, and issued incorrect jury instructions regarding self-defense. He also argued that the State made numerous improper comments in closing arguments. This court affirmed defendant's conviction. *People v. Madden*, 2012 IL App (1st) 093496-U.

¶ 18 Defendant filed a *pro se* postconviction petition on July 2, 2013. In that petition, defendant argued that Woods had committed perjury and that newly discovered evidence supported his trial theories of self-defense and defense of another. He attached an affidavit from

Hampton to the petition. He subsequently filed an amended petition. In the amended petition, defendant alleged, *inter alia*, that he was actually innocent based upon the newly discovered evidence in Hampton's affidavit, which he again attached. He also asserted that during his trial, Hampton was under an obligation to testify for the State as part of her own negotiated plea deal. However, Hampton subsequently invoked her right not to testify.

¶ 19 In the attached affidavit, Hampton avers that defendant asked her to call Shahande and ask him to come to defendant's home to collect the money defendant owed him. When Shahande arrived, defendant asked Hampton to give Shahande the money. Hampton met with Shahande who gave her the necklace's chain, but not its cross. Hampton refused to give him the money and the two "tussled." When Shahande demanded to speak to defendant, Hampton told him that he was not home. Shahande attempted to force his way into the house, but defendant eventually came out and stepped between Shahande and Hampton. Shahande "put his hand into his pocket and showed the handle of a gun." He told defendant and Hampton to enter a waiting automobile, and Hampton complied out of fear that he would be shot. Woods, the vehicle's driver, began to drive through an alley. Hampton eventually reached forward, placed the vehicle in park, and "snatched" the keys from the ignition. Both Woods and Shahande grabbed Hampton around the neck and arms and tried to pin her over the seat. When Hampton began to strike Woods with the keys, she heard a gunshot. Woods pulled out a knife and Hampton screamed "She's got a knife." Hampton then heard a second and third gunshot. Woods and Hampton both exited the vehicle and began to fight. When Woods kicked her in the stomach, Hampton felt stomach pains and began to cry "My baby!" Defendant pushed Woods to the ground by her neck, and then he and Hampton left.

¶ 20 The trial court summarily dismissed defendant's *pro se* petition in a written order.

Defendant appealed.

¶ 21 Defendant solely contends that the trial court's summary dismissal of his petition was erroneous because the petition put forth an arguable claim that defendant was actually innocent based on Hampton's affidavit. He argues that the affidavit arguably constitutes newly discovered evidence that was material, non-cumulative, and of conclusive character. He asserts the evidence is newly discovered because he could not have compelled Hampton, a codefendant, to testify at trial; material and non-cumulative because it corroborates defendant's testimony and theory of self-defense; and of a conclusive character such that it was likely to change the result at trial because the corroboration would strengthen defendant's credibility before a jury.

¶ 22 The State responds that the petition's summary dismissal was proper. It argues that the evidence was not newly discovered because it presents facts defendant already knew at trial. It also asserts that statements in the affidavit are cumulative of defendant's own trial testimony and that it is not conclusive because of numerous inconsistencies with defendant's own account of the shooting.

¶ 23 The Act allows defendants to challenge their convictions based on a substantial violation of their rights under the federal or state constitution. *People v. Beaman*, 229 Ill. 2d 56, 71 (2008); 725 ILCS 5/122-1 *et seq.* (West 2012). Proceedings under the Act are collateral in nature and are not a substitute for an appeal. *People v. Williams*, 186 Ill. 2d 55, 62 (1999). Accordingly, any issues which could have been raised on direct appeal, but were not, are procedurally defaulted. *People v. Whitfield*, 217 Ill. 2d 177, 183 (2005).

¶ 24 A postconviction proceeding consists of three stages. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). At the initial stage of proceedings, as in the current case, a postconviction petition may be summarily dismissed if it is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2012). A postconviction petition is frivolous or patently without merit only if the allegations in the petition, liberally construed in favor of the petitioner, do not state the gist of a constitutional claim. *Edwards*, 197 Ill. 2d at 244. All factual allegations in the petition must be taken as true, unless they are contradicted by the record. *People v. Coleman*, 183 Ill. 2d 366, 381-82 (1998). Petitioners are not required to include a legal argument or citation to legal authority. *People v. Brown*, 236 Ill. 2d 175, 184 (2010). However, *pro se* petitioners are not excused "from providing any factual detail whatsoever on the alleged constitutional deprivation." *Brown*, 236 Ill. 2d at 184. We review the first stage dismissal of a postconviction petition *de novo*. *People v. Collins*, 202 Ill. 2d 59, 66 (2002).

¶ 25 A claim of actual innocence is cognizable in a postconviction petition because the imprisonment of an innocent person violates the due process clause of the Illinois Constitution, as do procedural barriers to having a claim of innocence adjudicated on the merits. *People v. Washington*, 171 Ill. 2d 475, 489 (1996). In order to succeed on a postconviction claim of actual innocence, a petition must present evidence that is (1) newly discovered, (2) material and not merely cumulative, and (3) of such conclusive character that it would probably change the result on retrial. *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009); see also *People v. Edwards*, 2012 IL 111711, ¶ 32.

¶ 26 Even if we accept, *arguendo*, that Hampton's affidavit presented newly discovered, material, and non-cumulative evidence, his claim still must fail because we find the evidence

contained in Hampton's affidavit is not of such conclusive character that it would probably change the result on retrial. The conclusive prong is the "most important[]" element of an analysis of an actual innocence claim. *People v. Washington*, 171 Ill. 2d 475, 489 (1996). The new evidence need not prove actual innocence; it is enough that " 'all of the facts and surrounding circumstances \*\*\* should be scrutinized more closely to determine guilt or innocence.' " *Ortiz*, 235 Ill. 2d at 337 (quoting *People v. Molstad*, 101 Ill. 2d 128, 136 (1984)).

¶ 27 In considering whether Hampton's affidavit is of sufficiently conclusive character, we must accept its assertions as true except where they are affirmatively rebutted by the record. See *Coleman*, 183 Ill. 2d at 380-82. However, even taking Hampton's account as true we find that her potential testimony is not arguably of such conclusive character that it would probably change the result on retrial for either of defendant's convictions.

¶ 28 In regards to the first-degree murder, defendant did not deny that he shot and killed Shahande; instead he testified that he shot Shahande because he observed something in Shahande's hand and thought that Shahande was about to shoot Hampton. Hampton's affidavit does not mention anything in Shahande's hand as he pulled her into the front seat. She merely states that Woods and Shahande grabbed her and then she heard a gunshot. Consequently, her potential testimony does not corroborate defendant's stated reason for shooting Shahande. Defendant argues that Hampton's affidavit corroborates defendant's testimony that he observed Shahande with a gun before entering the vehicle. However, this statement only indicates that Hampton believed Shahande had a gun. The issue however, was what defendant subjectively believed. See *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 108 ("Self-defense and defense of others involves what the 'defendant *subjectively* believed.' "(Emphasis in original.) (quoting

*People v. Keefe*, 209 Ill. App. 3d 744, 751 (1991)). Hampton's affidavit does not address whether defendant observed, and reasonably believed, that Shahande had drawn the firearm later in the vehicle. In fact, Hampton's affidavit calls defendant's testimony into doubt. Defendant testified that Shahande had an object in his left hand, which was the same hand he witnessed Shahande use to pull on Hampton's upper body. Yet, Hampton makes no mention of feeling or observing this object as Shahande grabbed at her. Given that Hampton's affidavit does not corroborate defendant's stated reason for shooting Shahande, we find that her potential testimony is not arguably of such conclusive character that it would probably change the result of defendant's conviction for murder.

¶ 29 Similarly, Hampton's affidavit is not arguably so conclusive that it would probably change the result of defendant's conviction for attempted murder. Hampton does corroborate defendant's testimony that Woods pulled out a knife prior to defendant shooting at her. However, both Hampton and defendant indicate that Woods produced the knife after defendant had shot and killed Shahande. In killing Shahande and firing into the front seat, defendant was clearly the initial aggressor and thus not entitled to claim self-defense or defense of another. See *People v. Lee*, 213 Ill. 2d 218, 225 (2004). Moreover, Hampton states that Woods dropped the knife after defendant's second shot, but defendant then fired again. Even if one believed defendant had justification to shoot at Woods based upon her production of a knife, that justification ended when she dropped the weapon and the threat to either defendant or Hampton was no longer imminent. See *People v. Robinson*, 375 Ill. App. 3d 320, 336 (2007) (noting that use of force is not justified where threat is not imminent). Accordingly, we find Hampton's affidavit was not

arguably of such a conclusive nature that it would probably change the result of defendant's conviction for attempted murder.

¶ 30 Furthermore, while Hampton's affidavit corroborates some aspects of defendant's testimony, it does not refute the ample impeaching evidence the State presented against defendant at trial. Hampton's account does not address defendant's statements to police officers, where he did not state that he acted in defense, but rather stated that he had shot Shahande because people were arguing and he "couldn't take it anymore." Her affidavit also does not refute the fact that police officers did not find a firearm and it does not explain how the weapon disappeared from the vehicle. Finally, Hampton's statement does not contradict the State's evidence of defendant's guilty conscience. It corroborates the fact that he fled the scene and did not call for the police or an ambulance. It does not refute that defendant initially denied all involvement with the shooting. Viewing all the evidence at trial, Hampton's affidavit only corroborates some aspects of defendant's testimony, while not addressing the majority of the State's evidence which called defendant's credibility into doubt. Therefore, we cannot conclude that the affidavit is arguably likely to change the verdict against defendant on retrial.

¶ 31 Because we find Hampton's affidavit was not of an arguably conclusive nature with regards to either defendant's murder or attempted murder conviction, defendant's petition failed to put forth an arguable claim of actual innocence and the trial court's summary dismissal was therefore proper. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 32 Affirmed.