2016 IL App (2d) 140633-U
No. 2-14-0633
Order filed September 15, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 06-CF-2643
PHILIP G. MACKLIN,	)	Honorable John J. Kinsella,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's second-stage dismissal of defendant's amended postconviction petition would be affirmed as defendant did not make a substantial showing of actual innocence warranting an evidentiary hearing where alleged "newly discovered evidence" merely consisted of the opinion of a codefendant unsupported by any specific factual assertions, was cumulative of evidence presented to the trier of fact at defendant's original trial, and was not of such conclusive character that it would probably change the result on retrial.

¶ 2 Following a bench trial in the circuit court of Du Page County, defendant, Philip G. Macklin, was convicted of one count of armed robbery (720 ILCS 5/18-2(a)(2), (b) (West 2006)) under a theory of accountability (720 ILCS 5/5-2(c) (West 2006)) and sentenced to 24 years'

imprisonment. On direct appeal, this court affirmed defendant's conviction. *People v. Macklin*, 2012 IL App (2d) 110084-U. Thereafter, defendant filed a petition for relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2012)). In his petition, as amended, defendant alleged, *inter alia*, that he had new evidence of actual innocence in the form of an affidavit from a codefendant, stating that he (the codefendant) lied at trial about defendant's involvement in the robbery. The trial court dismissed the amended petition without an evidentiary hearing at the second stage of the postconviction process. On appeal, defendant argues he made a substantial showing of actual innocence thereby warranting an evidentiary hearing on his amended postconviction petition. We disagree and affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 The following facts are taken from the record as well as our order on defendant's direct appeal. See *Macklin*, 2012 IL App (2d) 110084-U. On August 28, 2006, William Chenault and Freddie Evans entered a White Hen convenience store on West Fullerton Avenue in Addison. The men had bandanas over their faces and gloves on their hands. Chenault pointed a gun at the cashier and demanded money. Evans removed the money from the cash register, and the men fled the store. Shortly thereafter, an Addison police officer arrested the two men. On September 13, 2006, defendant was also arrested. While initially indicting defendant on ten counts, the State *nol prossed* nine of them.

¶ 5 The matter proceeded to a bench trial on the armed robbery count. Prior to calling any witnesses, the parties presented a stipulation for testimony from the owner of the White Hen, the cashier at the store, two police officers who responded to the robbery, and an expert in firearm examination. The State then called the following four witnesses: (1) Detective Sean Gilhooley

of the Addison police department; (2) Brandie Flowers, defendant's one-time girlfriend; (3) Evans; and (4) Chenault.

¶ 6 Detective Gilhooley testified that he and other members of the Addison police department investigated the armed robbery that occurred at the White Hen on August 28. During the course of the investigation, Gilhooley was advised that an individual nicknamed "Big Mo" was involved in the robbery. Chenault later identified "Big Mo" as defendant. Acting on this information, Addison police arrested defendant. Following his arrest, defendant made a statement to police. Defendant related that on the night of the robbery, he was planning to go bowling with Flowers, Evans, and Chenault. To this end, defendant drove himself and the three others in Flowers' car, with Flowers in the front passenger seat and Evans and Chenault in the back seat. Defendant told police that on the way to the bowling alley one of the men in the back seat remarked, "I need some money." Defendant replied, "if you need money, you get it on your own." As they passed a White Hen, one of the men said they were "going to hit that one." Defendant told the men, "you do what you do" and then parked the car close to the White Hen. The two men exited the car, removed a duffle bag from the trunk, and proceeded to rob the White Hen. Following the men's departure from the vehicle, defendant and Flowers went to a gas station. After leaving the gas station, defendant received a call from either Evans or Chenault saying that they needed to be picked up. Defendant "did not want to leave them stranded" and went to get them, but did not pick them up because he saw police cars near the White Hen. Defendant did not talk to any of the police officers at the scene.

¶ 7 Flowers testified that in August 2006, she and defendant were dating. On the day of the robbery, she was at defendant's apartment, along with Evans and Chenault. She never saw defendant give Chenault or Evans anything that might have been used in the robbery, such as a

gun, gloves, or a bandana. The four of them left the apartment and entered her car. Defendant drove the car while Flowers sat in the front seat and Evans and Chenault sat in the back. According to Flowers, during the drive the men discussed school and "normal young guy stuff." Defendant parked the car at another apartment complex and opened the trunk. Chenault and Evans exited the car. The two men took a "bookbag" from the trunk, and defendant told them to hurry up. Flowers and defendant then went to get gas, and, while at the gas station, they heard police sirens. When defendant got back in the car, he received a phone call. Although Flowers did not hear what was said, she noticed defendant looked surprised during the conversation. Upon leaving the gas station, Flowers and defendant went to defendant's mother's house. Flowers provided a signed statement to the police, but testified that it was not given of her "own free will." She explained that the officers "kept on repeating" certain information they wanted her to include in the statement. Moreover, Flowers denied telling the police that Chenault and Evans were "dropped off for a lick," even though Flowers' statement to police contained this information.

¶ 8 Evans testified that defendant came to his home and picked up him and Chenault. They stopped at an apartment and a drugstore. A female was in the front passenger seat of the car. Evans stated that he was not familiar with Du Page County, so they chose to rob the White Hen after driving past the store. Evans testified that defendant gave him gloves and a bandana to wear during the robbery. He also said that defendant gave Chenault a gun while the men were in the apartment. Evans testified that defendant then dropped off the two men down the street from the White Hen. Evans affirmed that defendant planned to pick up him and Chenault after the robbery, noting he had no other way to get home. Following his arrest, Evans provided several statements to the police. According to Evans, these statements were not made freely and

voluntarily. Rather, he told the police "whatever *** they wanted to hear" in order to strike a deal regarding his role in the robbery. Evans eventually pleaded guilty to armed robbery and, at the time of his testimony, was serving a six-year sentence of imprisonment. On cross-examination, Evans stated that he agreed to testify against defendant to have his sentence reduced and stated that his testimony before the court was honest.

¶ 9 Chenault testified that he robbed the White Hen with Evans and that defendant was involved in the robbery. However, Chenault provided inconsistent testimony. He initially stated that the gun used in the robbery was his own, but later said that he received the gun from defendant. Moreover, at first, he did not remember how he and Evans got to the White Hen, but later remembered telling police that "Big Mo" drove them there. According to Chenault, "Big Mo" was defendant. Chenault also testified that "Big Mo" provided him with a red bandana and was supposed to pick up him and Evans after the robbery. Chenault stated that he told the police only what they wanted to hear in exchange for a reduction of his sentence.

¶ 10 At the close of the State's case, defense counsel moved for a directed finding. After the trial court denied the motion, defendant rested. Following closing arguments, the trial court found defendant guilty of armed robbery based on an accountability theory. In the course of so ruling, the court made the following findings:

> "I have considered the evidence that the State has produced and has been admitted into evidence. I've considered the testimony of all the witnesses and the arguments of counsel. It's the Court's finding as to Count I, the charge of armed robbery, that [defendant] is guilty of that charge on the theory of accountability. I would just point out the statements of a number of the witnesses, certainly it was evident from anyone who watched Mr. Chenault or Mr. Evans that they certainly didn't want to be here, they didn't

> want to be testifying against [defendant]. And I believe that that—that came out in their presentation.
>
> I thought Mr. Evans' statement was telling in regards to this White Hen in particular, why that White Hen was picked and how he was going to get out. All right? He said he doesn't know DuPage, he doesn't know the area, and yes, he did expect to get picked up, because he had no way to get out of there. You look at Ms. Flowers' statement, Ms. Flowers backs up what [defendant] said to Detective Gilhooley.
>
> When the individual in the back seat said that he needed money and that he would commit a robbery or do a lick. [*sic*] What did defendant say? The defendant said, you do what you have to do. [He s]topped the car, popped open the trunk, the two co-defendants exited, and the defendant stayed and waited for a phone call and went back. That reinforces [the State's] argument; that reinforces the statement that [defendant] gave to Detective Gilhooley. I believe the State has met their [*sic*] burden."

Following the denial of defendant's posttrial motion, the trial court sentenced defendant to 24 years' imprisonment for his role in the robbery.

¶ 11 Defendant filed a notice of appeal on November 7, 2008. However, the appeal was dismissed for jurisdictional reasons. On October 15, 2009, defendant filed a *pro se* postconviction petition, alleging that his counsel was ineffective for failing to file a timely notice of appeal. The parties later agreed that defendant would withdraw the postconviction petition, and they would then recommence proceedings in the trial court—thereby revesting it with jurisdiction (see *People v. Kaeding*, 98 Ill. 2d 237, 240-41 (1983)). Defendant filed a motion to reconsider sentence on January 12, 2011, and the trial judge denied the motion. Defendant then filed a notice of appeal. On direct appeal, defendant argued that the trial court abdicated its duty

as fact finder by not deciding between two competing versions of the facts, one of which would have rendered him not guilty. We rejected defendant's argument and affirmed his conviction. *Macklin*, 2012 IL App (2d) 110084-U, ¶¶ 13-29.

¶ 12 On September 24, 2012, defendant filed a *pro se* petition for relief pursuant to the Act. The circuit court docketed the petition and appointed counsel to represent defendant. With the assistance of counsel, an amended petition was filed on January 7, 2014. As amended, the petition alleged, *inter alia*, that defendant was actually innocent based on "newly discovered evidence." Attached to the petition were two notarized affidavits, one from codefendant Evans and the other from Timothy Zahr, an investigator with the Du Page County Public Defender's Office. Evans' affidavit stated in its entirety as follows:

> "I, Freddie Evans, after being duly sworn upon my oath depose and states [*sic*] that the following matters are both true and correct in substance and in facts:
>
> I state upon my oath that my testimony for the most part was correct however the part about [defendant] being involved in the armed robbery was totally false. I also state that [defendant] didn't believe that myself and William Chenault was going to actual [*sic*] rob the White Hen when he let us out of the car. We got upset with [defendant] when he called us stupid when he heard about what we wanted to do. [Defendant] did in fact tell us that he was going to take us bowling. I felt sorry for what we have done. [Defendant] had absolutely nothing to do with the robbery at White Hen in the late August of 2006 [*sic*]. And I am sorry for what I said during trail [*sic*], but I had to do whatever it took to save myself. I received 6 yrs on a cop-out but in order to keep it I had to come back and testify against [defendant]. I didn't wish jail upon anyone especially someone that's innocent and was nothing but good to me. I've been trying to change my

> life but I know it's time for me to be honest and admit the truth. [Defendant] is innocent and I and [Chenault] did what we had to do to receive a lighter sentence. I had to lie on [defendant]. Addison police [department] said if we gave them the head of our organization that they would let us go and cut us a deal as long as we testified against [defendant]. Even at trail [*sic*] I tried to tell the truth. I just wanted to do the right thing now."

In his affidavit, Zahr stated that he spoke to Evans by telephone on August 2, 2013. Evans told Zahr that he and Chenault "were solely responsible for the robbery and that [defendant] knew nothing about it." Evans elaborated that "because he was not from the area and did not know how to get around, [Evans] had arranged for [defendant] to pick [him and Chenault] up after a while for a ride home, but that [defendant] knew nothing about the robbery that they had planned and committed." Evans told Zahr that he was "intimidated and pressured by police officers into making false statements" and that he implicated defendant in order to receive a more favorable sentence for himself.

¶ 13 The State filed a motion to dismiss the amended petition. With respect to defendant's claim of actual innocence, the State argued that Evans' affidavit did not present any newly discovered evidence and that the addition of the statements in the affidavit would not change the result on retrial.

¶ 14 In granting the State's motion to dismiss the amended petition, the circuit court found that defendant had not submitted any newly discovered evidence suggesting actual innocence. The court remarked:

> "[W]e don't know what Mr. Evans thinks or why *** Mr. Evans[] thinks the defendant was not guilty. The evidence is pretty consistent that [defendant] was the driver of the

> car. The question for the Court to resolve is whether he had the requisite state of mind and was accountable for the armed robbery. And Mr. Evans testified both to facts supporting that conclusion, at the same time also testified to raising doubt about the credibility of what he was saying because he said he was forced to say it. It wasn't quite clear. Let's just say Mr. Evans' credibility was certainly suspect given all of his testimony.
>
> But at this point there is no newly discovered evidence suggesting actual innocence and really nothing more than Mr. Evans' opinion that [defendant] is not guilty without really articulating how he reached that conclusion other than his own opinion about the defendant's state of mind which he might legitimately have and might have had even at that time."

The court also noted that Evans did not recant any of the specific facts to which he testified at trial, such as what defendant gave Evans and Chenault in preparation for the robbery. According to the court, without recanting his specific testimony, Evans' opinion about whether defendant was guilty was not relevant:

> "Well, [Evans] may be of the opinion that [defendant] is not guilty of the offense of armed robbery because [Evans] doesn't believe his understanding of accountability would suggest that [defendant] is guilty. So it is the facts that are crucial to understand what he said, what he recanted and what he is saying now and what he is recanting about what he said before. And those have to be the facts that I would have to proceed on this issue."

Defendant now appeals.

¶ 15 II. ANALYSIS

¶ 16 The Act provides a process by which a criminal defendant may challenge his or her conviction. 725 ILCS 5/122-1 *et seq*. (West 2012). To be accorded relief under the Act, a defendant must establish "a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both" in the proceedings which resulted in his or her conviction. 725 ILCS 5/122-1(a)(1) (West 2012); see also *People v. Simpson*, 204 Ill. 2d 536, 546 (2001). Because a postconviction proceeding is a collateral attack on the trial court proceedings, issues that were decided on direct appeal are barred by the doctrine of *res judicata* and issues that could have been raised, but were not, are forfeited. *People v. Beaman*, 229 Ill. 2d 56, 71 (2008).

¶ 17 In a noncapital case, the Act provides a three-stage process for the adjudication of a postconviction petition. *People v. Harris*, 224 Ill. 2d 115, 125 (2007). The present case involves a dismissal at the second stage of the postconviction process. At this stage, the trial court may appoint counsel to represent an indigent defendant (725 ILCS 5/122-4 (West 2012)), and counsel will have an opportunity to amend the petition (*People v. Boclair*, 202 Ill. 2d 89, 100 (2002)). In response, the State either answers or moves to dismiss the petition. 725 ILCS 5/122-5 (West 2012); *People v. Vasquez*, 356 Ill. App. 3d 420, 422 (2005). The trial court must then determine whether the allegations of the petition, supported by the trial record or accompanying affidavits, make a substantial showing of a constitutional violation. *Simpson*, 204 Ill. 2d at 546-47; *People v. Edwards*, 197 Ill. 2d 239, 246 (2001). If no such showing is made, the petition is dismissed. *Edwards*, 197 Ill. 2d at 246. If, however, a substantial showing of a constitutional violation is made, the trial court will proceed to the third stage, at which an evidentiary hearing is held. 725 ILCS 5/122-6 (West 2012); *Edwards*, 197 Ill. 2d at 246.

¶ 18 At the second stage of the postconviction process, the defendant bears the burden of making a substantial showing of a constitutional violation. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). All well-pleaded facts not positively rebutted by the trial record are taken as true. *Pendleton*, 223 Ill. 2d at 473. The circuit court does not engage in fact finding or credibility determinations at the second stage; rather, such determinations are made at the third, or evidentiary, stage of the postconviction process. *People v. Coleman*, 183 Ill. 2d 366, 385 (1998). Thus, the question raised in an appeal from an order dismissing a postconviction petition at the second stage is whether the allegations in the petition, liberally construed in favor of the petitioner and taken as true, are sufficient to invoke relief under the Act. *People v. Sanders*, 2016 IL 118123, ¶ 31. A circuit court's ruling on the sufficiency of the allegations in a postconviction petition is a legal determination. *Coleman*, 183 Ill. 2d at 388. Accordingly, we review *de novo* a second-stage dismissal. *Sanders*, 2016 IL 118123, ¶ 31; *Pendleton*, 223 Ill. 2d at 473. With these standards in mind, we turn to the substance of defendant's arguments.

¶ 19 Defendant argues that the trial court erred in dismissing his amended petition without an evidentiary hearing. Relying on the notarized affidavit of Evans, defendant asserts that his postconviction petition made a substantial showing of actual innocence. In particular, defendant contends that because Evans' affidavit stated that he (defendant) had "absolutely nothing to do with the robbery," it establishes that defendant did not intend to promote or facilitate the planning or commission of the armed robbery and therefore could not be guilty based on an accountability theory. The State responds that the circuit court properly dismissed defendant's amended postconviction petition following second-stage proceedings. According to the State, Evans' "bare opinion that defendant should not be guilty of armed robbery" does not constitute newly discovered evidence. The State also asserts that the evidence in Evans' affidavit is merely

cumulative of evidence presented at defendant's trial and is not of such conclusive character that it would likely change the result of the trial.

¶ 20 Actual innocence constitutes more than just a failure to be proven guilty beyond a reasonable doubt; it means total vindication or exoneration. *People v. Barnslater*, 373 Ill. App. 3d 512, 519-20 (2007). 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. *People v. Washington*, 171 Ill. 2d 475, 489 (1996); see also *People v. Ortiz*, 235 Ill. 2d 319, 331 (2009) ("This court has held that the due process clause of the Illinois Constitution affords postconviction petitioners the right to assert a freestanding claim of actual innocence based on newly discovered evidence."). A postconviction petition presents an actual-innocence claim where there is evidence that is: (1) new; (2) material; (3) noncumulative; and (4) of such conclusive character that it would probably change the result on retrial. *People v. Coleman*, 2013 IL 113307, ¶ 96; *Ortiz*, 235 Ill. 2d at 333. Ultimately, defendant's argument on appeal fails because, taking the allegations in Evans' affidavit as true, we conclude that they merely constituted the opinion of a codefendant unsupported by any specific factual assertions, were cumulative of evidence presented to the trier of fact at defendant's original trial, and were not of such conclusive character that they would probably change the result on retrial.

¶ 21 Evidence is new if it was discovered after trial and it could not have been discovered before trial through the exercise of due diligence. *Coleman*, 2013 IL 113307, ¶ 96. "Usually, to qualify as new evidence, it is the *facts* comprising that evidence which must be new and undiscovered as of trial, in spite of the exercise of due diligence." (Emphasis added.) *Barnslater*, 373 Ill. App. 3d at 523. Evans' trial testimony consists of approximately 18 pages. During his time on the stand, Evans testified that defendant provided him and Chenault with the gun,

bandanas, and gloves used in the robbery, that defendant dropped off him and Chenault near the White Hen, and that defendant intended to pick up him and Chenault after the robbery. According to defendant, the statements in Evans' affidavit are "in direct contradiction to his testimony at trial." We disagree. In fact, Evans initially states in the affidavit that his trial testimony "for the most part was correct." Although Evans subsequently states that "the part about [defendant] being involved in the armed robbery was totally false," he never affirmatively indicates what portions of his testimony regarding defendant's involvement in the robbery were supposedly false. For instance, Evans does not state in the affidavit that defendant defendant did *not* supply the gun, bandanas, or gloves used in the robbery. Likewise, Evans does not indicate that defendant did *not* plan on retrieving him and Chenault after the robbery. Indeed, Evans tacitly acknowledges that he, defendant, and Chenault were in a car together and that defendant let Evans and Chenault out of the car at some point. In light of the lack of specific factual assertions supporting Evans' conclusion that defendant had nothing to do with the robbery, we conclude that the affidavit does not present any "newly discovered evidence." See *Barnslater*, 373 Ill. App. 3d at 522 (noting that affidavit from victim that the defendant did not commit crime "carrie[d] with it the ambiguity of a legal conclusion, as opposed to a statement of specific facts contradicting or denying the facts supporting conviction."). Indeed, we agree with the circuit court that, at best, Evans' affidavit consists of Evans' opinion that defendant played no role in the armed robbery based on Evans' misunderstanding of the accountability theory under which defendant was convicted. See *Barnslater*, 373 Ill. App. 3d at 522 (noting that despite the statement in an affidavit from the victim attached to the defendant's petition for postconviction relief that the defendant did not sexually assault her, defendant could still be criminally culpable depending on the victim's understanding of "sexual assault.").

¶ 22 Even if the evidence contained in Evans' affidavit could be characterized as "newly discovered," defendant has failed to establish other elements of an actual-innocence claim. For example, defendant has not shown that the evidence at issue is noncumulative. Noncumulative evidence is evidence that adds to what the trier of fact heard at the original trial. *Coleman*, 2013 IL 113307, ¶ 96. Defendant contends that the evidence in Evans' affidavit is not cumulative for several reasons. First, defendant asserts that the evidence in Evans' affidavit shows defendant's "state of mind about the armed robbery Evans and Chenault were about to carry out." In this regard, defendant notes that the affidavit provides that defendant told Evans and Chenault that he was taking the two men bowling. According to defendant, this establishes that "they were not all in the car as part of a plan to rob a store, but as part of a plan—on [defendant's] side, at least—to go bowling." Defendant then states that "no one else testified [defendant] told Evans and Chenault that he was taking them bowling." However, Detective Gilhooley testified about the statement defendant made to police following his arrest. Defendant told Gilhooley that on the night of the robbery, he was planning to go bowling with Flowers, Evans, and Chenault. Thus, contrary to defendant's assertion, the trier of fact was presented with testimony that defendant told Evans and Chenault that he was taking them bowling. As such, this evidence would not add to what the trier of fact heard at the original trial. See *People v. Anderson*, 401 Ill. App. 3d 134, 141-42 (2010).

¶ 23 Defendant also notes that Evans states in the affidavit that he and Chenault "got upset with [defendant] when he called us stupid when he heard about what we wanted to do." According to defendant, this statement is not cumulative because "no one else testified that [defendant] berated Evans and Chenault for their plan when he heard it." Again, however, similar evidence was presented by way of Gilhooley's testimony. Gilhooley related that in his

statement to police, defendant reported that on the way to the bowling alley, one of the men in the back seat of the car remarked, "I need some money." Defendant replied, "if you need money, you get it on your own." Then, as the car passed the White Hen, one of the men stated they were "going to hit that one." In response, defendant told Evans and Chenault, "you do what you do." He then parked the car close to the White Hen so Evans and Chenault could exit the vehicle. Thus, the trier of fact heard evidence at the original trial suggesting that defendant scolded Evans and Chenault when he heard about their plan for obtaining money. As such, evidence that defendant called Evans and Chenault "stupid" for wanting to rob the White Hen would not add to what the trier of fact heard at the original trial. Hence, we reject defendant's contention that the evidence in Evans' affidavit is noncumulative.

¶ 24 Finally, we determine that defendant failed to establish that the alleged newly discovered evidence is of a conclusive character. Conclusive means that the evidence, when considered along with the evidence presented at trial, would probably lead to a different result. *Coleman*, 2013 IL 113307, ¶ 96. Stated differently, we must find that the allegedly new evidence is "so conclusive that it is more likely than not that no reasonable juror would find him guilty beyond a reasonable doubt." *Sanders*, 2016 IL 118123, ¶ 47. Defendant has failed to meet this burden.

¶ 25 Defendant was convicted under an accountability theory. A defendant may be found guilty under the law of accountability if he acted with intent to promote or facilitate the offense. 720 ILCS 5/5-2(c) (West 2006). In this case, the State's evidence against defendant included the stipulated evidence as well as the testimony of Detective Gilhooley, Flowers, Chenault, and Evans. According to defendant, the State's evidence was "equivocal, at best" as to whether he intended to aid in the planning or commission of the robbery. We disagree. Gilhooley testified regarding the statement defendant provided to the police. In that statement, defendant

acknowledged driving with Flowers, Evans, and Chenault on the night of the robbery, hearing about Evans' and Chenault's plan to rob the White Hen during the ride, stopping near the White Hen so Evans and Chenault could get out of the car, and observing the two men removing a duffle bag from the trunk of the car. Defendant also tried to return after the crime to pick up Evans and Chenault. He aborted this attempt, however, when he saw police cars near the White Hen, thereby indicating consciousness of guilt. Flowers confirmed that at some point prior to the robbery, defendant dropped off Evans and Chenault and the two men retrieved a bag from the trunk of the car. Flowers further testified that shortly later, defendant received a phone call. Although Chenault initially testified that he could not remember how he got to the White Hen and that the gun used in the robbery was his own, he later acknowledged that defendant drove him to the store and that defendant supplied the gun used in the robbery. Chenault also testified that defendant provided him a red bandana and was supposed to pick up him and Evans after the robbery. Similarly, Evans testified that defendant drove him and Chenault to the White Hen, gave him gloves and a bandana to wear during the robbery, provided a gun to Chenault, and planned to pick up the two men after the robbery.

¶ 26 Evans states in his affidavit that his testimony regarding defendant's participation in the robbery was "totally false." As noted above, however, Evans also states in his affidavit that his testimony "for the most part was correct." More important, Evans does not support his assertion regarding the falsity of his testimony with any specific factual assertions and the other evidence in the affidavit is cumulative of evidence presented at trial. Significantly, Evans does not recant his trial testimony that defendant drove him and Chenault to the robbery, that defendant provided him and Chenault with materials used in the commission of the robbery, or that defendant intended to pick up him and Chenault after the robbery. Evans' vague, inconsistent statements

cannot overcome the evidence presented at trial to exonerate defendant. As such, we find that the evidence in Evans' affidavit was not of such conclusive character that it would probably change the result on retrial.

¶ 27 In sum, the alleged "newly discovered evidence" presented in support of defendant's amended postconviction petition consisted of the opinion of a codefendant unsupported by any specific factual assertions, was cumulative of evidence presented to the trier of fact at defendant's original trial, and was not of such conclusive character that it would probably change the result on retrial. As such, we conclude that defendant failed to make a substantial showing of his actual innocence and the circuit court properly dismissed defendant's amended postconviction petition following second-stage proceedings.

¶ 28 III. CONCLUSION

¶ 29 For the reasons set forth above, we affirm the judgment of the circuit court of Du Page County which dismissed defendant's amended postconviction petition at the second stage. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2012); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 30 Affirmed.