2016 IL App (5th) 130339-U

NO. 5-13-0339

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT



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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Franklin County. |
| | ) | |
| v. | ) | No. 06-CF-321 |
| | ) | |
| JAMES A. COULTER, | ) | Honorable |
| | ) | Leo T. Desmond, |
| Defendant-Appellant. | ) | Judge, presiding. |

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Moore concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court's denial of the defendant's postconviction petition for forensic testing is affirmed where the result of the testing would not have the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence.

¶ 2 The defendant, James Coulter, was convicted by a jury of two counts of first-degree murder and sentenced to two concurrent terms of natural life in prison. His conviction and sentence were affirmed on direct appeal. *People v. Coulter*, No. 5-08-0119 (2009) (unpublished order under Supreme Court Rule 23). The defendant filed a *pro se* postconviction motion for forensic testing on March 22, 2013. This appeal stems from the trial court's June 7, 2013, denial of the defendant's motion pursuant to section

116-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/116-3 (West 2012)). For the following reasons, we affirm.

¶ 3 On December 5, 2007, the defendant was found guilty of the murders of his estranged wife, Amanda Tope Coulter (Amanda), and her friend, Jack Weston (Weston). The bodies of the victims were found in Weston's home on October 13, 2006. Amanda was shot in the chest with a shotgun from one to three feet away; Weston was shot in the chest with a shotgun from approximately ten feet away. Both victims died as a result of shotgun wounds.

¶ 4 At the trial, the State presented strong evidence of the defendant's guilt, including, *inter alia*, testimony from a witness that the defendant frequently made threatening phone calls and sent threatening messages to Amanda; the testimony of six witnesses, including the defendant's daughter, that on or around the night of the murders, the defendant had threatened to kill Amanda and/or Weston; and the testimony of other witnesses as to implied threats the defendant made towards Weston.

¶ 5 Jason Walker testified that on the night of the murders, the defendant stopped at his house and asked to borrow a shotgun, but Walker declined to loan him the gun. Gary Minton testified that the defendant asked to borrow a shotgun to go skeet shooting, and that he agreed to loan the defendant his 20-gauge shotgun and shells.

¶ 6 The defendant's daughter testified that on the night of the murders, the defendant was on his knees in the alley of his home, said that he did "it," that he was sorry, and that he did not want to go to prison for the rest of his life. The defendant's sister testified that on the night of the murders, the defendant asked her for a rag to wipe off a shotgun. As

he was wiping off the shotgun, the defendant told his sister that he had shot somebody. An officer at the jail testified that a few months after the murders, the defendant fell to his knees, crying, and told the officer, "I killed her."

¶ 7 Against the advice of his attorneys, the defendant testified on his own behalf. He denied that he killed Amanda and Weston and stated that he never threatened to kill anyone. He testified that after Amanda left him, he attempted suicide and was hospitalized. In October 2006, he went looking for Weston because he heard that Weston had gone out with Amanda. On October 12, 2006, the defendant spoke to Weston and asked him to wait until he and Amanda obtained a divorce; the defendant denied threatening Weston, but agreed that he might have told people that he wanted to fight Weston.

¶ 8 The defendant claimed that he borrowed Minton's shotgun that evening in order to commit suicide. He testified that after driving to several cemeteries, he spoke to his mother's headstone; however, he refrained from committing suicide because he did not want to cause a mess on his mother's grave. The defendant stated that that night, he packed his clothes and drove to New Mexico to "just get away"; while there, he learned that Amanda was dead and that he was wanted for her murder. The defendant stayed overnight in a motel and planned to go to the police in the morning, but was arrested before he could do so.

¶ 9 The defendant denied telling his daughter and sister that he had killed the victims, and he did not know why his daughter and sister testified that he made those statements. The defendant asserted that the jail officer had misunderstood what he had said; the

defendant claimed that he was distraught upon learning that his daughter and sister were going to testify against him, and he had cried out to the jail officer that "they said I killed her."

¶ 10 When asked on cross-examination whether he had committed the murders, the defendant testified that "I don't think it was me." The defendant stated that he wanted to be given truth serum or a polygraph test. He testified that he could not tell the jury with certainty that he was not the killer and that although he could not remember everything that happened that night, he did not think that he had killed anyone.

¶ 11 Forensic evidence was also presented at trial. State Police crime investigator James Minckler found bloody footwear impressions leading towards Weston's body and on towards a bedroom. Minckler also recovered shotgun pellets from Weston's body, and shotgun pellets and wadding were recovered from Amanda's body. After the defendant was arrested in New Mexico, crime scene investigator Richard Matthews testified that no blood evidence was discovered on either the defendant's vehicle or clothing.

¶ 12 A Remington shotgun and shells were collected from Gary Minton. Forensic scientist Richard Amberger examined the shotgun, as well as the shotgun pellets and wadding recovered in the autopsies. The shotgun shells were size seven and a half to eight, and the wadding was physically similar to that from a 20-gauge shell. By agreement among American ammunition manufacturers, 20-gauge shotgun pellets are yellow. Minton testified that the shells he gave to the defendant were 20-gauge shot shells with number eight size shot. The defendant's sister testified that when the

defendant came over to wipe off the shotgun, the defendant had a yellow shotgun shell with him.

¶ 13 As previously stated, the defendant was found guilty and thereafter filed a direct appeal. At issue in the present appeal is the defendant's postconviction motion for forensic testing, requesting that ballistic, DNA, and fingerprint evidence be tested with newer and more advanced testing not available at the time of trial. Attached to the defendant's motion was a laboratory report stating that a latent lift was compared to an inked fingerprint and palmprint card of the defendant, and "comparison of the suitable latent impressions to the submitted inked fingerprint card did not reveal any identifications." The defendant also attached a crime scene report from Minckler. The report stated that:

> "The front door [of Weston's home] was metal with a glass storm door. The exterior doorjamb appeared to have recent damage. *** A 'Gel lift' was used to collect the footwear imprint. A partial footwear imprint was observed on the exterior side of the door. The imprint was located under the door handle. The interior of the glass storm door was processed for latent fingerprints with positive results. A swab was used to process a portion of the interior glass of the storm door that appeared to contain a partial palm print."

Mickler's report stated that, among others, three of the "items of evidential value" collected were (1) one latent lift from the interior glass door, (2) a swab from the interior glass door, and (3) a "Gel lift" of the partial footwear imprint at the exterior front metal door.

¶ 14 The defendant also attached a lab report that indicated that "One Illinois State Police Sexual Assault Evidence Collection Kit from Amanda Tope" was submitted, but "No analysis conducted at this time." Under the heading "EVIDENCE DISPOSITION,"

the report noted that certain exhibits were to be submitted for DNA analysis; however, sexual assault kit was among other evidence to be held in the laboratory vault "and should be picked up within thirty days."

¶ 15 The defendant's motion stated that its purpose was to obtain evidence regarding his actual innocence, that testing could produce evidence that could be matched to the person "who actually kicked the door in to gain entance [*sic*] committing this crime," and that "further forensic DNA testing of the collected sexual assault kit would conclude that another offender was the attacker in this case." The motion requested that this evidence be submitted to fingerprint databases and DNA databases of convicted felons. The trial court denied the defendant's motion. He appeals.

¶ 16 A defendant may bring a motion for forensic testing not available at trial if the evidence that is sought to be tested was either not previously subject to the testing that is now requested, or that was previously tested, but could be subjected to additional testing utilizing a method that was not scientifically available at the time of trial that provides a reasonable likelihood of more probative results. 725 ILCS 5/116-3(a) (West 2012). At the outset, however, the defendant must present a *prima facie* case that identity was the issue in the trial or guilty plea which resulted in his conviction, and that the evidence to be tested has been subject to a sufficient chain of custody. 725 ILCS 5/116-3(b) (West 2012).

¶ 17 Once a *prima facie* case has been established, the trial court shall allow the testing under reasonable conditions upon a determination that:

> "(1) the result of the testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence even though the results may not completely exonerate the defendant; 116-3(c) amended 8-15-14; was quoting West 2014 version, (2) the testing requested employs a scientific method generally accepted within the relevant scientific community."

725 ILCS 5/116-3(c) (West 2012). We review a motion for forensic testing *de novo*. *People v. O'Connell*, 227 Ill. 2d 31, 35 (2007).

¶ 18 The defendant asserts that he has established a *prima facie* case, first arguing that his identity was at issue at trial. He notes that his motion states that he "has always maintained his innocence, and there was [*sic*] no allegations that he made inculpatory statements." The State responds that identity was not a genuine issue at trial because the defendant made multiple inculpatory statements, and under cross-examination, did not deny killing the victims but told the jury that he could not remember what had happened that night.

¶ 19 However, the question of whether identity was at issue at trial is not tied to the amount of evidence the State presents against the defendant; it is sufficient for the defendant to show that he denied committing the crime at trial. *People v. Grant*, 2016 IL App (3d) 140211, ¶¶ 18, 21 (citing *People v. Urioste*, 316 Ill. App. 3d 307, 316 (2000)). The State points to its circumstantial evidence regarding the defendant's identity as the perpetrator, which is indeed overwhelming. The State essentially argues that the defendant cannot demonstrate that identity was at issue because the State prevailed at trial given the evidence presented on the matter; however, that is not the test. See *id*. ¶ 21. Here, though we agree that the defendant's testimony, taken as a whole, did not

inspire confidence that he did not commit the crime, he did definitively testify that he did not kill Amanda and Weston, and that he did not know who was responsible. He thereafter asserted his innocence in his postconviction motion, and the trial record supports his claim that identity was at issue in his trial. This is sufficient to meet this prong of the defendant's *prima facie* burden. See *People v. Bailey*, 386 Ill. App. 3d 68, 74 (2008) (holding that even if the defendant's motion makes a conclusory statement about identity, a review of the record may demonstrate that identity was at issue at trial).

¶ 20 To meet the second prong of the *prima facie* case, the defendant must demonstrate that "the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material respect." 725 ILCS 5/116-3(b)(2) (West 2012). The defendant alleges in his motion that the evidence was subjected to a sufficient chain of custody. The exhibits attached to the defendant's motion show that the evidence was collected by Special Agent Breton O'Neill and secured in the Illinois State Police District 13 Evidence Vault. The DNA swab, sexual assault kit, and the latent print were all submitted for testing and were in the custody of the Illinois State Police Division of Forensic Services in Carbondale, Illinois, in January 2007. The reports indicate that the evidence was either retained by the lab or returned to the Illinois State Police.

¶ 21 Generally, even a defendant's conclusory assertions that the evidence has been kept under a proper chain of custody is sufficient to meet his *prima facie* burden. See *Bailey*, 386 Ill. App. 3d at 74-75. Thus, we find that the defendant's assertion, coupled

with his exhibits, has satisfied his *prima facie* burden demonstrating that the evidence has been kept under a proper chain of custody.

¶ 22 Finally, if the defendant establishes his *prima facie* case, the trial court must determine whether the result of the testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence; if so, the trial court shall order the forensic testing. 725 ILCS 5/116-3(c)(1) (West 2012). The question of whether forensic testing has the potential to produce evidence materially relevant to a defendant's claim of actual innocence cannot be answered in the abstract; it requires consideration of the evidence adduced at trial, as well as the evidence a defendant seeks to test. *People v. Savory*, 197 Ill. 2d 203, 214 (2001). Evidence is "materially relevant" if it will significantly advance defendant's claim of actual innocence. *People v. Shum*, 207 Ill. 2d 47, 65 (2003); see also *People v. Gibson*, 357 Ill. App. 3d 480, 489 (2005) ("Thus, although the evidence against defendant may be strong and compelling, his claim of actual innocence will nevertheless be significantly advanced by a favorable DNA test result.").

¶ 23 After reviewing the material that the defendant has requested for testing with the evidence adduced at trial, we cannot say that the testing sought by the defendant in the present case has the potential to be materially relevant to a claim of actual innocence.

¶ 24 The defendant notes that the prosecution only tested the latent print that the police recovered against the defendant's fingerprints. The latent print was not submitted to any database, and the swab from the front door and the sexual assault kit were never tested and therefore could not have been submitted to a database. He asserts that section 116-

3(a)(1) only requires a showing that the evidence was not subjected to the requested testing at the time of trial, and not that the testing was unavailable at the time of trial. *People v. Pursley*, 407 Ill. App. 3d 526, 531 (2011).

¶ 25 However, we note that regardless of whether the evidence was not subjected to testing or the testing was unavailable, the evidence must nevertheless be materially relevant to advancing the defendant's claim of actual innocence in order for the motion for its testing to be granted. In *Pursley*, the appellate court found that the defendant met the requirements of section 116-3 because the ballistics testing had the potential to show that crime scene evidence matched the evidence of another crime that occurred after the police had confiscated the defendant's gun, and therefore could implicate a weapon besides the defendant's gun. *Pursley*, 407 Ill. App. 3d at 535. The court noted that the State and defense both relied on the ballistics evidence, and much of the State's remaining evidence was circumstantial. *Id*. at 538. We thus find *Pursley* distinguishable from this case, because as we have both discussed above and noted in our order affirming the direct appeal, the defendant was convicted on the overwhelming testimonial evidence presented at trial, evidence that did not focus on ballistics or biological evidence. Multiple State's witnesses testified that the defendant threatened to kill Amanda and Weston, others testified that he confessed his crime to them, and the defendant was linked to the shotgun through the testimony of Minton and his sister. The defendant gave highly unreliable testimony, stating both that he did not commit the crimes and that he could not remember if he committed the crimes. The State's case rested on this evidence, not on biological evidence placing the defendant at the scene of the crime; furthermore, there was no

indication that Amanda was raped by an attacker on the evening of her murder. When a review of the record reflects that a defendant's convictions were based on overwhelming evidence not focused on the biological evidence adduced in the case, it is entirely possible that forensic testing will not significantly advance a claim of actual innocence. See, *e.g.*, *People v. Barrow*, 2011 IL App (3d) 100086, ¶ 32; *People v. Gecht*, 386 Ill. App. 3d 578, 582 (2008). We hold, therefore, that any physical evidence from the items that the defendant seeks to have tested would not significantly advance his claim of actual innocence.

¶ 26 For the foregoing reasons, we affirm circuit court's denial of the defendant's postconviction motion for forensic testing.

¶ 27 Affirmed.