

No. 1-14-2834

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Respondent-Appellee,)	Cook County.
)	
v.)	No. 03 CR 22172
)	
LAVONDELL NOBLE,)	
)	Honorable
Petitioner-Appellant.)	Nicholas Ford,
)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court failed to require the State to prove it had conducted fingerprint testing in compliance with a prior mandate issued by our court. Thus, the trial court is reversed. We remand for further proceedings.

¶ 2 Petitioner-appellant, Lavondell Noble (Noble), appeals from the circuit court of Cook County's finding that the respondent-appellee, the People of the State of Illinois (the State), complied with this court's previous mandate pursuant to section 116-3 of the Code of Criminal Procedure (725 ILCS 5/116-3 (West 2010)). We reverse the trial court's finding, and remand for further proceedings.

¶ 3

BACKGROUND

¶ 4 Following a 2004 bench trial in the circuit court of Cook County, Noble was convicted of aggravated kidnapping and unlawful use of a weapon by a felon and was sentenced to concurrent prisons terms of 12 years and 4 years, respectively. Noble maintains that he is innocent and that he was mistakenly identified by the victim. His convictions and sentences were affirmed on appeal by this court. *People v. Noble*, No. 1-05-0840 (2007) (unpublished order under Supreme Court Rule 23). In a following appeal, we also affirmed the summary dismissal of Noble's 2008 post-conviction petition. *People v. Noble*, 1-08-2840 (2009) (unpublished order under Supreme Court Rule 23). Subsequently, Noble filed a petition in the trial court for forensic testing under section 116-3 of the Code of Criminal Procedure (725 ILCS 5/116-3 (West 2010)), seeking the submission of unidentified fingerprints from the crime scene to the FBI's Integrated Automated Fingerprint Identification System (IAFIS) for fingerprint testing. The trial court dismissed Noble's petition. However, we reversed that decision and remanded back to the trial court, directing it to grant Noble's request for fingerprint testing through the IAFIS database. *People v. Noble*, 1-11-3548 (2012) (unpublished order under Supreme Court Rule 23) (hereinafter referred to as *Noble I*).

¶ 5 For a full recitation of the facts that led to Noble's conviction and to his petition for a fingerprint check, see *Noble I*. In that order, we found that Noble was entitled to a fingerprint records search of the unidentified fingerprints contained in the body of evidence in his case because his conviction was based almost entirely on the victim's identification of Noble. We noted that the parties did not dispute that the fingerprints were not subjected to IAFIS testing, that identity was an issue at trial, and that a chain of custody was maintained, pursuant to section 116-3. We concluded that Noble made a *prima facie* case, that there was a potential that the

outcome of the requested IAFIS fingerprint search would be materially relevant to Noble's claim of actual innocence, and that justice would be served by granting his petition. Therefore, in *Noble I*, we reversed the judgment of the trial court and remanded for the court to order the State to conduct the IAFIS search.

¶ 6 On remand, Noble was initially represented by counsel and did not appear in court. On December 2, 2013, the State stated that "it is the People's position that the [appellate] court order for fingerprint comparison has been completed and complied with by the lab," but that Noble's counsel "differs in that opinion." The State noted that it had spoken with the lab analyst regarding the fingerprints submission. Noble's counsel indicated that she had received the lab worksheets which showed that three different lab technicians had looked at the evidence, but that they all did not review the same fingerprints requested for testing. The trial court set a date for the lab analyst to come and speak with Noble's counsel, but clarified that it would not be a hearing.

¶ 7 On February 14, 2014, lab analyst Julie Wessel (Wessel) from the Illinois State Police Crime Lab came to court to speak with Noble's counsel off the record. After the meeting, Noble's counsel requested an opportunity to make a record concerning the conversation with Wessel because Noble's counsel claimed there was still an unknown number of unidentified fingerprints that needed to be tested. Noble's counsel stated to the trial court that she disagreed with the State regarding which fingerprints and palm prints had been submitted for forensic testing into which database.

¶ 8 The hearing continued on June 27, 2014, and the State said to the trial court "All of the forensic testing, fingerprint analysis that has been requested thus far has been completed and the reports have been provided." On the same date, Noble's counsel requested to withdraw because

Noble had filed several *pro se* motions to stay proceedings since the last court date. The trial court granted Noble's counsel's request to withdraw, and simultaneously struck Noble's *pro se* motions since he had filed them while represented by counsel.

¶ 9 On August 1, 2014, Noble appeared in court *pro se* and for the first time since our remand mandate in *Noble I*. The State represented to the court that "[T]he testing requested and ordered by the appellate court has all been completed, so in terms of the 116-3 issue that was remanded, we believe that the order of the appellate court is fulfilled, the testing's been completed, the reports have been tendered to counsel." Noble then told the court that he had filed the motion to stay proceedings because the fingerprints submitted to database were "not the same unidentified prints on the initial testing of the prints, and I can demonstrate by identifying those exact prints that were [*sic*] remained to confirm that the 116 motion has been complied to." Noble further explained that four fingertips, two fingerprints, and one palm print from the initial testing did not match either him or the victim, but that none of these were on "the matrix sheet that was previously down after the appellate order." The trial court initially told Noble that it would continue the case for purposes of Noble "bringing down the sheet to show that they were complied with." The State then said that it could "tender copies of the reports from the lab," but it is unclear from the record whether the State ever tendered any records to the trial court or Noble.

¶ 10 Following the State's comments, the trial court said to Noble: "Do you understand what they are saying? Every laten[t] [*sic*] print, that'll mean a print that's recoverable and open to being compared to a known print has been submitted, that's what they're saying. How could there be prints that were not submitted?" Noble replied: "[W]hat I want is production of documentation showing that they tested the exact same prints on the initial ***." The trial court interrupted Noble and stated "Over your objection, I'm going to say the State complied." The

court then told Noble "You're welcome to appeal that order."

¶ 11 On August 28, 2014, Noble filed a timely notice of appeal.

¶ 12 ANALYSIS

¶ 13 We note that we have jurisdiction as Noble has appealed from a final order pursuant to Illinois Supreme Court Rule 606 (eff. Nov. 1, 2016).

¶ 14 Whether a trial court has complied with a reviewing court's mandate is a question of law subject to *de novo* review. *Fleming v. Moswin*, 2012 IL App (1st) 103475-B ¶ 120 (citing *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 351–52 (2002)). This court has the inherent authority to compel compliance with our orders. *People v. Mitchell*, 2014 IL App (1st) 120080, ¶ 17.

¶ 15 When a reviewing court remands a matter to the trial court for further proceedings, the trial court is obligated to proceed in accordance with the reviewing court's mandate. *Fleming*, 2012 IL App (1st) 103475-B ¶ 120 (citing *In re Marriage of Jones*, 187 Ill. App. 3d 206, 215 (1989)).

¶ 16 On appeal, Noble argues that this case must be remanded for further proceedings before a different trial judge because the record does not demonstrate that the trial court complied with this court's mandate from *Noble I*. Noble also argues that his due process rights were violated when the trial court accepted the State's conclusion that the testing had been completed over Noble's objection. The crux of his argument for remand is that while the State alleged that there were no unidentified prints from the crime scene that had not been submitted for testing pursuant to our mandate in *Noble I*, it did not introduce any evidence to prove this, and that the trial court simply took the State's word in making its finding.

¶ 17 Both our mandate in *Noble I* and section 116-3 require that fingerprint evidence be

submitted to the FBI's IAFIS. However, Noble argues that the State only submitted fingerprint evidence to the Illinois Automated Fingerprint Identification System (AFIS). Noble points out that the record does not contain any court orders for IAFIS testing, and that the trial court, the State, and Noble all only reference the AFIS database in the transcripts, and never the IAFIS database. Noble claims that even accepting the State's declaration that all available prints had been run through the AFIS database, the record shows noncompliance with neither the mandate nor section 116-3 because they each specifically require IAFIS testing.

¶ 18 The State argues that the trial court properly found that the State had complied with this court's mandate in *Noble I* because the State specifically told the court that it had complied with the "testing ordered by the Appellate Court." The State claims that there are reports demonstrating that the testing was completed in accordance with our mandate, and that it was Noble's obligation to include these reports in the record. However, it is unclear from the record whether or not the State ever actually tendered copies of the reports to Noble or the trial court. Additionally, if the State has reports proving that it completed the testing required by our mandate, the State should have supplemented the record with those reports.

¶ 19 Regarding Noble's argument that the fingerprint evidence was submitted only to AFIS and not IAFIS, the State makes several arguments, including that the court reporter could have easily transcribed the wrong acronym. We do not find merit in any of these arguments, as they do nothing to prove that the State did in fact submit the fingerprint testing to IAFIS, as required in our mandate.

¶ 20 The State's final argument is that Noble's request for fingerprint testing is nothing more "than a waste of valuable, but limited judicial resources" due to the "overwhelming evidence of [Noble's] guilt." In *Noble I*, we made it clear that Noble was entitled to a fingerprint search

through the IAFIS database, and that it would be materially relevant to Noble's claim of actual innocence.

¶ 21 In *Noble I*, we explicitly directed the trial court to order fingerprint testing through the IAFIS database pursuant to Noble's petition and section 116-3. There is nothing in the record demonstrating that the State complied with our mandate. The State could have easily shown that it had complied by submitting the proper documentation to either the trial court or to this court, but it did not. The trial court should have required the proper documentation to confirm that the State truly complied with our mandate, especially in light of Noble's objections. Thus, we find that the trial court erred in finding that the State had complied with our mandate in *Noble I*.

¶ 22 Noble requests that we remand this case to a new trial judge since the same trial court judge has already dismissed his request for fingerprint testing twice. We deny the request.

¶ 23 CONCLUSION

¶ 24 For the reasons stated, we reverse and remand this case to the circuit court of Cook County.

¶ 25 Reversed and remanded.