2018 IL App (5th) 140292-U

NOS. 5-14-0292 & 5-14-0293 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FFTH DISTRICT



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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Madison County. |
| | ) | |
| v. | ) | Nos. 96-CF-1958 & |
| | ) | 96-CF-1959 |
| | ) | |
| GLENN W. REED, JR., and LENN D. REED, | ) | Honorable |
| | ) | Edward C. Ferguson, |
| Defendants-Appellants. | ) | Judge, presiding. |

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JUSTICE CATES delivered the judgment of the court.
Justices Moore and Overstreet concurred in the judgment.

**ORDER**

¶ 1 *Held*: Trial court properly denied defendants' motions for testing pursuant to section 116-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/116-3) (West 2014)).

¶ 2 Brothers Glenn W. Reed, Jr., and Lenn D. Reed, defendants, separately appealed the judgments of the circuit court of Madison County denying their motions for forensic testing pursuant to section 116-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/116-3 (West 2014)). On March 28, 2017, we consolidated the appeals for purposes of disposition. We now affirm the denial of their motions.

¶ 3 After a jury trial in 1998, defendants were found guilty of aggravated hijacking and first-degree murder. Their convictions and sentences were affirmed on direct appeal. See *People v. Reed*, 324 Ill. App. 3d 671 (2001). Both defendants now request that DNA and fingerprint evidence be tested by scientific measures that were not used at the time of their trials, asserting that such evidence has the potential to advance their claims of innocence. Specifically, the motions ask for "Touch and, or Trace DNA-STR testing on the prints lifted from the vehicle and item(s) found therein, Integrated Automated Fingerprint Identification System (IAFIS) testing conducted on the fingerprints, and STR and, or DNA testing on the hair strand found near or on the air bag of the victim's vehicle."

¶ 4 On May 27, 2014, a hearing was held on defendants' motions for forensic testing. The circuit court of Madison County denied defendants' motions after finding that any latent fingerprints found were not suitable for the requested AFIS search. The court also noted that a human hair found in the victim's vehicle via detritus taping was not sufficiently identified to be relevant. The court concluded that defendants "failed to show significant relevance, materiality or probative value to the issues at trial or currently before the court. None of these issues were factors at trial and it is not demonstrated here how they would measurably add to the proof of guilt or lack thereof." Defendants appeal the denial of their motions. We affirm.

¶ 5 Section 116-3 allows a defendant to have physical evidence subjected to scientific testing that was not available at the time of trial or was not subjected to the testing now requested if certain requirements are met. See *People v. Savory*, 197 Ill. 2d 203, 208

(2001); *People v. Pursley*, 407 Ill. App. 3d 526, 529 (2011); *People v. Boatman*, 386 Ill. App. 3d 469, 472 (2008). To be entitled to postconviction forensic testing, a defendant must show: (1) there was a question of identity at trial as to whether the defendant had committed the crime; (2) the evidence is available for testing (chain of custody); and (3) the testing has the potential to produce new, noncumulative evidence materially relevant to a defendant's assertion of actual innocence, through use of a scientific method generally accepted within the relevant scientific community. 725 ILCS 5/116-3 (West 2014). As for identity, a defendant makes a sufficient case for forensic testing by showing that he denied committing the crime at trial. See *People v. Urioste*, 316 Ill. App. 3d 307, 313 (2000). The chain of custody requirement, construed leniently in favor of allowing forensic testing, is met by establishing that the evidentiary samples are in the custody of the State. See *People v. Johnson*, 205 Ill. 2d 381, 393-94 (2002). Finally, with respect to scientific testing that might produce evidence that would help a defendant show his actual innocence, it is not required that the scientific testing of a certain piece of evidence would completely exonerate a defendant. *Savory*, 197 Ill. 2d at 214. Rather, testing is required when new evidence will add new information to a defendant's claim of actual innocence. *People v. Gibson*, 357 Ill. App. 3d 480, 489 (2005). A ruling on a motion for forensic testing under section 116-3 is reviewed *de novo*. *People v. Stoecker*, 2014 IL 115756, ¶ 21.

¶ 6 The details of the murder of the victim are not important to the issues before us on this appeal. What is important is that defendants claim they were framed by a codefendant who received immunity from prosecution for first-degree murder.

Defendants repeatedly point out there was no physical evidence or any inculpatory statements linking them to the crimes charged.

¶ 7 In their motions for forensic testing, defendants request testing of two types of evidence—DNA and fingerprint evidence. Specifically, defendants assert latent fingerprint impressions that were lifted from the victim's vehicle, and a hair strand recovered from or near the deployed airbag of the vehicle, were not subjected to complete testing before trial and were not submitted to any database for comparison. They believe that the scientific testing requested will reveal the identity of the true killer, and further show that they were not involved in the murder of the victim or the hijacking of his vehicle.

¶ 8 Turning to the issue of the hair strand first, we agree with the State that the circuit court correctly denied defendants' motions for DNA testing of a hair claimed to have been found on or near the deployed driver's airbag of the victim's car. As the State points out, defendants presented no proof that such hair existed. Therefore, defendants cannot prove that the hair has been subject to a sufficient chain of custody. In other words, they failed to establish a *prima facie* case for testing.

¶ 9 At the hearing on the motion for DNA testing of the hair, defendants argued testing of the hair strand claimed to have been found on or around the airbag would be materially relevant to their assertion of actual innocence because the location of that hair suggests that the hair's donor was driving the car at the time of the wreck, and hence could have been the victim's true assailant. It was revealed at the hearing, however, that the officer who searched the victim's wrecked car after it was found testified at

defendants' trial that he did not collect any hair into evidence. The forensic scientist who processed the car's inflated air bag related she did not collect any hair from the airbag into evidence. The lab report did not list the existence of any hair found on or near the deployed airbag. Contrary to defendants' assertions, there was no hair found on or near the airbag of the victim's vehicle admitted into evidence at their trial. Defendants rely on a portion of a cross-examination of a witness from the trial as support for their claims that such a hair was found on or near the airbag. While defense counsel's initial questions suggested that a hair was found, and appeared to focus on whether that hair belonged to one of the defendants, the witness unequivocally stated he did not find a hair, and that no hairs were found on or near the airbag. No court can order testing of evidence that does not exist. While defendants, who are black, did present proof of the existence of detritus tapings from the seats of the victim's car which contained both Caucasian and animal hairs, the hairs collected from the tapings were not further identified or tested. Even if a Caucasian hair from the tapings was identified to a particular person, it would not prove defendants' innocence given that there was no evidence to show when the hair was placed on the seats of the vehicle. We agree that the circuit court correctly denied the motion for DNA testing because defendants did not prove that any hair had significant relevance, materiality or probative value, and the requested testing was speculative at best. Accordingly, we find no error in the circuit court's denial of the defendants' motion for DNA testing of the strand of hair claimed to have been found.

¶ 10 We also find no error with respect to the denial of defendants' motions pertaining to fingerprint testing. We agree with the State that identification of the donor of

fingerprints lifted from the victim's vehicle would not be materially relevant to defendants' claims of innocence. Determination of whether forensic evidence significantly advances a defendant's actual innocence claim requires an evaluation of the evidence introduced at trial, as well as an assessment of the evidence the defendant seeks to test. *Stoecker*, 2014 IL 115756, ¶ 33. At the hearing on defendants' motions, both the lab report and police report presented at trial reveal that latent fingerprint and palm impressions were lifted from several locations on the victim's vehicle, and were compared to the inked fingerprint cards of the victim and defendants. The lab report states that comparison of the suitable latent impressions and the fingerprint cards did not reveal any identifications. Defendants complain that the fingerprints were never submitted to any database for comparison. We agree that, in this instance, identifying the donor or donors of the fingerprints left on the victim's vehicle would not be materially relevant to defendants' claims of innocence. Fingerprints can last for a very long time, and the victim's vehicle was not dusted for fingerprints until the day after it was found wrecked and abandoned. The record is completely silent as to who was in and around the victim's vehicle between the time defendants dropped off the codefendant, and several hours later, when a resident in the area heard the crash and found the victim's wrecked car. The fingerprints could have been left by many people innocent of the charged crimes, including people who may have touched the vehicle days before the victim's murder, or unknown persons who may have touched the car after it was found. The connection between the fingerprints and the crimes is simply too tenuous for such evidence to materially advance any claims of innocence. Evidence of the existence of

unidentified fingerprints on the victim's car was only a minor part of the evidence at trial. The fingerprints certainly were not central to the State's evidence of defendants' guilt, nor was the evidence closely linked to the charged crimes or probative of who committed them. See *Savory*, 197 Ill. 2d at 215; *People v. English*, 2013 IL App (4th) 120044, ¶¶ 21-24 (link between crime and fingerprints too attenuated for additional testing to significantly advance claim of actual innocence).

¶ 11 More importantly, the crime lab report revealed that there were no latent fingerprints suitable for AFIS processing. AFIS is the Illinois State Police's automated fingerprint identification database, while IAFIS is the integrated automated fingerprint identification system maintained by the Federal Bureau of Investigation. At the hearing on defendants' motions, it was further established that the fingerprint lifts were also unsuitable for IAFIS analysis. In order to run such an analysis, the fingerprint has to be of good quality, and can only be from certain portions of the finger. None of the fingerprints found were deemed suitable for processing at the time of trial. At the time of the motion hearing, there was nothing that made them suitable for testing under either system as well. Defendants failed to prove that the result of any testing had the scientific potential to produce new, noncumulative evidence materially relevant to defendants' assertions of actual innocence. 725 ILCS 5/116-3(c)(1) (West 2014). *People v. Slover*, 2011 IL App (4th) 100276, ¶¶ 21-22 (fingerprint of insufficient quality to perform AFIS search lacked scientific potential to produce relevant evidence). The same is true with respect to defendants' motions for DNA testing of the fingerprint lifts. Defendants never proved that a DNA test of latent fingerprints taken from the victim's car was even

possible, and failed to show that touch DNA testing of fingerprint lifts is a scientific method generally accepted within the relevant scientific community. A "touch DNA" test is a test for trace amounts of DNA that can be left on an item touched by a person. The fingerprints lifted from the victim's vehicle exist only as a powder, stuck to tape, which is stuck to fingerprint cards. According to the assistant director of the Illinois State Police Lab, there is no way to remove the tape in an effort to obtain any possible DNA. Once the tape is removed, the fingerprint itself is destroyed in the process. Given that the requested test would destroy the integrity of the evidence in which the State has an interest (725 ILCS 5/116-3 (West 2014)), the court correctly denied defendants' motions. We also agree with the State that even if the DNA test of the latent fingerprints were scientifically possible, and could be conducted without destroying the fingerprint lift evidence, the result of the testing, as previously stated, would not have the potential to produce new, noncumulative evidence materially relevant to defendants' assertion of actual innocence. Accordingly, we find no error in the court's denial of defendants' motions for forensic testing.

¶ 12 For the reasons stated above, we affirm the judgment of the circuit court of Madison County denying defendants' motions.

¶ 13 Affirmed.