2019 IL App (1st) 161725-U

No. 1-16-1725

Order filed August 13, 2019

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 04 CR 2160
	)	
DAVID WYNTER,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's denial of defendant's motion for leave to file a successive postconviction petition is reversed and the case is remanded for second stage proceedings. Defendant established cause and prejudice for his claim that his due process rights were violated when the State knowingly used an officer's perjured testimony.

¶ 2 Defendant David Wynter appeals from the trial court's denial of his motion for leave to file a successive postconviction petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* West 2014)). On appeal, defendant contends the trial court erred when it denied

him leave to file a successive postconviction petition because he established cause and prejudice for his claim that his due process rights were violated when the State knowingly used a Chicago police sergeant's perjured testimony. We reverse.

¶ 3 Following a bench trial, defendant was convicted of residential burglary (720 ILCS 5/19-3 (West 2004)) and possession of burglary tools (720 ILCS 5/19-2 (West 2004)). He was sentenced to, respectively, 15 and 3 years in prison on each count, to be served concurrently. We affirmed that judgment on direct appeal. *People v. Wynter*, 2012 IL App (1st) 091008-U.

¶ 4 Defendant's conviction arose from a burglary that occurred at Sofia Martinez's home on January 8, 2004. Before trial, defendant filed a motion to suppress evidence. At the hearing, defendant testified that, at about 11:30 or 11:40 a.m., on January 8, 2004, when he was walking through a Dominick's store parking lot, he saw a bag by a dumpster and opened it. Inside the bag, he found "something valuable," a knife, and a screwdriver. He took these items out and threw them away because he had no use for them. He did "not really" examine the contents of the bag but saw a camera and "some clothes, stuff like bleach."

¶ 5 When he was about to exit the parking lot, an unmarked police squad car stopped about 10 feet away from him. Two officers exited the vehicle and came towards him. One officer said, "it's a good thing you didn't run 'cause it's three of us and we'da caught you." Another officer told him he thought defendant had a warrant, they were going to charge him with theft of mislaid property, and defendant could go home when his "prints clear." Defendant testified that he was not violating any laws when the officers stopped him.

¶ 6 Chicago police sergeant James Padar testified that, at about 11:42 a.m. on January 8, 2004, he was on patrol with Chicago police officers Michael Jacob and Scott Groll in the area of

1763 West Howard Street. Padar saw an individual, whom he identified in court as defendant, walking on the sidewalk. Padar testified he believed defendant was wanted on an outstanding warrant because "[e]ach morning when I arrived at work I would check new outstanding warrants and pull up a picture of the person that was wanted under each warrant and I believe he resembled someone that had an outstanding warrant." Padar testified that defendant did not actually have a warrant and had similar characteristics as someone he had previously seen in a photograph.

¶ 7 The officers stopped their vehicle next to defendant and all three of them exited. Groll said, "Chicago Police, come over here." Padar testified that, defendant, who was about 10 feet away, turned, started running, and threw a knife and screw driver on the ground. Padar also testified that he initially believed defendant threw two knives to the ground but, after he recovered the items, he discovered it was a knife and screw driver. Defendant ran about 20 feet and then stopped and put his hands up.

¶ 8 Defendant was arrested for unlawful use of a weapon based on the knife that he threw. In the laundry bag, the officers found an opened package of underwear, a laundry bag, and a bag containing a camcorder. Padar performed a custodial search of defendant and did not recover any cash from him. A security guard at the store informed Padar that he saw "some objects thrown." Padar testified that he never said to defendant "it's a good thing you didn't run because there's three of us."

¶ 9 Chicago police officer Ann Brophy testified that, at around 12:45 p.m., on January 8, 2004, she received a call about a burglary at 7381 North Damen Avenue and went to that location to write a case report. During her investigation, she learned that the burglary occurred

between 11 a.m. and 12:10 p.m. and that several items were taken, including a laundry bag, camcorder, batteries, a camcorder bag, $1500 in United States currency, a package of unopened underwear, and cassettes. Brophy did not see defendant on the date of the burglary.

¶ 10 The State introduced into evidence defendant's three prior convictions: residential burglary in 1996, possession of a controlled substance in 1995, and attempt residential burglary in 1991. With respect to the 1991 conviction, the trial court noted that it "might be too old."

¶ 11 The court denied defendant's motion to suppress evidence. In doing so, it stated:

> "Well, I can't say that what [defendant] said didn't make sense. The only question is whether I believe him. It could have happened that way. But in a sense he corroborates some of what the officers said. The officers said that they observed him throw the screwdriver and the knife, but I think we have to start a little earlier in the analysis.
>
> The fact is that the officer had a, in my opinion, a legitimate belief, *** that [defendant] was a person that was wanted on a warrant. His testimony was that each morning he checked and pulls up photographs of people that might have outstanding warrants. He said that [defendant] looked like one of the people that was in a photograph that he had seen earlier when he came on duty. That when he stopped and attempted to conduct an interview of [defendant] he ran. [Defendant] says he didn't run, but let's assume that he didn't run. The fact of the matter is that the officer still had a right to stop him, because he has a right to stop and inquire and particularly in this case where he believes that he was the subject of a warrant. It turns out that [defendant] didn't have a warrant, but that's not something that the officer would or wouldn't know at the time that he decided to make that stop.

> The testimony is that [defendant] ran and discarded two weapons or what the officer believed to be two weapons. A knife and a screwdriver is what it turned out to be. But the officer at the time believed that [defendant] had two knives that he discarded. And so I believe that the officer's testimony is credible. I think that in this sense the testimony is perhaps, perhaps closely balanced.
>
> The fact is that [defendant] has convictions that I believe may be considered as having an impact on my evaluation of credibility, and so I believe that the officer's testimony is more credible."

¶ 12 The record on appeal does not contain a transcript from the trial. However, the record contains a bystanders' report filed under Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005). The following facts from trial are taken from the bystander's report.

¶ 13 At trial, Sofia Martinez testified that, on January 8, 2004, she lived at 7381 North Damen Avenue. She left her apartment at 7 a.m. with her son and husband, Juan Reyes. At about 11 to 11:30 a.m., they returned home to an open and broken door. The items in her house were all over the place and a camera was missing. About 15 to 30 minutes later, her son called the police. Martinez told the police she was missing a camera, two laundry bags, and her husband's underwear. At trial, she identified photographs of blue and black laundry bags, her husband's underwear, a camera bag, and a camera. At the police station, a police officer showed her items she did not even know were missing. They also showed her a ring that did not belong to her. She had about $200 in change in her home. She did not have $1500 in United States currency and did not tell the police officers she was missing that amount. Martinez never gave defendant permission to come into her house or take her items.

¶ 14 Chicago police sergeant James Padar testified that, at about 11:42 a.m., on January 8, 2004, he was with Chicago police officers Jacobs and Groll. Padar saw defendant, whom he identified in court, carrying a blue laundry bag. Padar "reviewed all warrants and pictures of people with warrants[s]" and defendant "resembled a picture of someone he had seen in a warrant." When the officers were about 20 to 30 feet away from defendant, Padar told his partners, "I think he's got a warrant." The bystanders' report states that Padar "reviewed hot list every day — it could have been 10-20 people, including their picture, age, race, and build."

¶ 15 The officers stopped the car and Groll said to defendant, who was about 10 to 15 away, "Chicago police officer [*sic*] – come to the car." Defendant looked, ran, and threw a knife and screwdriver out of his jacket. After Padar pursued defendant for about 20 to 30 feet, defendant put his hands up. Inside the laundry bag, Padar found underwear and a green canvas bag with a camcorder. Groll gave defendant his *Miranda* warnings and defendant told Padar he got the camcorder "in Elgin two day[s] ago for two rocks." Defendant told Padar he was doing laundry. The location of where the officers saw defendant was about four blocks from the location of the burglary.

¶ 16 Chicago police detective Kathleen Hayes testified for defendant. On January 8, 2004, Hayes did not go to the scene but investigated the burglary from the police station. Hayes recalled the victims telling her that $1500 was missing from their home and Reyes told her that coins were also missing. When Hayes testified at the grand jury proceeding she testified that her investigation showed that defendant was in the area of the 7831 North Damen carrying a laundry bag.

¶ 17 Reyes testified that he never told anyone that $1500 was taken from him. He did not recall having a conversation with a female officer and he told a male officer he was missing about $200 in coins. He also told the officers he was missing a camera and did not tell them about a bag.

¶ 18 Following argument, the court found defendant guilty of residential burglary and possession of burglary tools. Defendant filed a *pro se* motion for a new trial, which included a claim for ineffective assistance of counsel. In defendant's written motion, he asserted that trial counsel was ineffective for failing to object to Padar's "hot sheet testimony to justify the propriety of the stop." To the motion, defendant attached a Chicago Police Department document dated September 18, 2007, and signed by a Freedom of Information Officer stating that "the daily hot sheet was last printed on May 27, 2003, so that record no longer existed for the dates you requested."

¶ 19 At the hearing held under *People v. Krankel*, 102 Ill. 2d 181 (1984), defendant asserted that "Padar testified the stop was based on my resemblance to a suspect he saw that morning on the daily hot sheet" and "Exhibit A reveals that to be factually false***." Defendant explained that Exhibit A showed that the Chicago Police Department "ceased publication of this daily hot list, hot sheet on May 27, 2003." He argued that Padar committed perjury to justify the stop and his trial counsel failed to object to the "introduction of daily hot sheet to justify the propriety of the arrest."

¶ 20 Following the *Krankel* hearing, the court found that defendant did not demonstrate a claim for ineffective assistance of trial counsel. In doing so, the court noted that defendant made "numerous references to perjorous testimony," which was a "pretty significant thing to just fling

around without any backup." The court also denied defendant's motion for new trial and subsequently sentenced him to prison terms of 15 years for residential burglary and 3 years for possession of burglary tools, to be served concurrently.

¶ 21 Defendant appealed, arguing that the bystanders' report was an insufficient substitute for a verbatim trial transcript and the evidence was insufficient to prove him guilty beyond a reasonable doubt. *People v. Wynter*, 2012 IL App (1st) 091008-U, ¶¶ 17, 22. We affirmed the trial court's judgment. *Id.* ¶35.

¶ 22 In 2013, defendant filed a postconviction petition, alleging his constitutional rights were violated and his trial counsel and appellate counsel were ineffective. Defendant alleged, *inter alia*, that Padar "presented knowingly fabricated evidence to justify a stop." He argued that Padar testified at the motion to suppress hearing and at trial that the stop was based on his resemblance to a suspect he saw on a "daily hot list" and that counsel did not challenge this evidence. To his petition, he attached as "Exhibit A" the "Response from the Chicago Police about Hot Sheet."[1] The trial court dismissed the petition as frivolous and patently without merit. Defendant appealed, and we denied his late notice of appeal for lack of jurisdiction.

¶ 23 In 2015, defendant filed a motion for leave to file a successive postconviction petition. He argued, as relevant here, that Padar knowingly committed perjury numerous times. He asserted that, at the motion to suppress hearing, Padar committed perjury by presenting "the hot sheet evidence" and by testifying that defendant ran upon being approached by the police. Defendant contended he established cause because the proof of Padar's misconduct was first

[1] We note that defendant's "Exhibits" list in his initial postconviction petition states that "Exhibit A" is the "Response From Chicago Police about Hot Sheet." However, in the common law record, this document is not attached to his postconviction petition. The 2007 letter from the Chicago Police Department is however attached to defendant's motion for leave to file successive postconviction petition.

reported on April 16, 2014, which was after he filed his initial postconviction petition in September 2013. Defendant argued he suffered prejudice because Padar's perjury infected the entire proceeding and denied him a fair trial.

¶ 24 To his petition, defendant attached a copy of an April 16, 2014, NBCChicago.com article entitled "Video Shows Cops May Have Lied On the Stand" ("article"). The article reported about a case in Glenview, in which five officers, including Padar, testified that they stopped the defendant for a traffic stop and, during the stop, they removed a bag containing marijuana, after which they arrested him. The article explained that defense counsel confronted one of the officers with a squad car video showing that the officers first placed the defendant in handcuffs and then searched his vehicle, during which they found the marijuana. The article reported that the trial court judge told the State: " 'I expect you to do something about this, and to talk to all the superiors involved in this case. All of the officers lied on the stand today.' " According to the article, all five officers "have been stripped of their police powers and placed on leave, pending investigations of the Glenview case." The article also stated that, in another case, an officer had accused Padar of "reneging on a home remodeling job" in that "he did work on Padar's summer home, but the sergeant refused to pay him, saying he had falsified the officer's official city attendance records instead."

¶ 25 To his petition, defendant also attached the same 2007 Chicago Police Department document that he attached to his *pro se* motion for new trial and initial postconviction petition, which stated that the "daily hot sheet was last printed on May 27, 2003."

¶ 26 The trial court denied defendant's motion for leave to file a successive postconviction petition. In doing so, the court noted that defendant previously raised the claim that Padar lied at

trial in his initial postconviction petition and the court found it meritless and dismissed it. It stated that the article does not prove that Padar committed perjury in defendant's case or in the Glenview case, noting that the charges were not proven in a court of law and "relying on mere accusations would be speculative at best." The court stated that, even if the allegations were confirmed, defendant failed to demonstrate a nexus between his case and the Glenview case and "the two cases are otherwise unrelated factually and remote in time and perjury conviction alone would not automatically discredit every case [Padar] was ever involved in, without some additional evidence."

¶ 27 On appeal, defendant contends that the trial court erred when it denied him leave to file his successive postconviction petition. He argues he established cause and prejudice for his claim that his due process rights were violated when the State knowingly used Padar's perjured testimony. Defendant claims he established cause because the April 16, 2014, NBCChicago.com article describing Padar's misconduct became available in 2014, which was after he filed his initial postconviction petition. He claims he established prejudice because the State's use of Padar's perjured testimony denied him due process and a fair trial, as the trial court specifically relied on Padar's testimony and credibility when it denied his motion to quash arrest and suppress evidence and when it found him guilty.

¶ 28 Under the Post-Conviction Hearing Act (Act), a defendant may attack a conviction by asserting that it resulted from a "substantial denial" of his constitutional rights. 725 ILCS 5/122-1 *et seq.* (West 2014); *People v. Tate*, 2012 IL 112214, ¶ 8. A postconviction action is not a direct appeal from a conviction but is a collateral attack on the judgment. *Id.* Therefore, "issues

raised and decided on direct appeal are barred by *res judicata*, and issues that could have been raised but were not are forfeited." *Tate*, 2012 IL 112214, ¶ 8.

¶ 29 The Act "contemplates the filing of only one post-conviction petition" (*People v. Pitsonbarger*, 205 Ill. 2d 444, 456) and successive petitions are disfavored (*People v. Jones*, 2017 IL App (1st) 123371, ¶ 41). Thus, "[c]laims raised in an original postconviction petition and decided by the circuit court or on direct review have *res judicata* effect." *People v. Coleman*, 381 Ill. App. 3d 561, 567 (2008).

¶ 30 To file a successive petition, the Act requires a defendant to obtain leave of court. *People v. Sutherland*, 2013 IL App (1st) 113072, ¶ 16. To obtain leave of court, the trial court must determine that the petition establishes either a colorable claim of actual innocence or, as relevant here, cause and prejudice. *People v. Jackson*, 2016 IL App (1st) 143025, ¶ 19. It is a defendant's burden to obtain leave of court to file his successive petition. *People v. Edwards*, 2012 IL 111711, ¶ 24.

¶ 31 Under the Act, the trial court may grant a defendant leave of court to file a successive postconviction petition if he "demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure." 725 ILCS 5/122-1(f) (West 2014). Cause is demonstrated if a defendant identifies "an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings." *Id.* Prejudice is established "by demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process." *Id.* The cause and prejudice standard is higher than the standard applied to an initial postconviction petition, where the trial court may summarily dismiss the

petition at the first stage if it is "frivolous or patently without merit." *Jackson*, 2016 IL App (1st) 143025, ¶¶ 18-19. A defendant must establish both cause and prejudice. *Sutherland*, 2013 IL App (1st) 113072, ¶ 16.

¶ 32 Our supreme court has stated that "leave of court to file a successive postconviction petition should be denied when it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petitioner fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings." *People v. Smith*, 2014 IL 115946, ¶ 35. When "considering a motion for leave to file a successive petition, all well-pleaded facts and supporting affidavits are taken as true." *Edwards*, 2012 IL App (1st) 091651, ¶ 25. Our review of a trial court's ruling on a motion for leave to file a successive postconviction petition is *de novo*. *People v. Warren*, 2016 IL App (1st) 090884-C,¶¶ 74-75.

¶ 33 We conclude that defendant established cause for his claim that the State knowingly used Padar's perjured testimony, which is based on the April 16, 2014, NBCChicago.com article attached to his successive petition. As previously discussed, this article reported about a case in which Padar and four other officers testified about a traffic stop and subsequent search of the defendant's vehicle. According to the article, at trial, defense counsel confronted the officers with a squad car video of the incident that contradicted the officers' testimony. The article reported that the trial court in that case stated: " 'Obviously this is very outrageous conduct *** All of the officers lied on the stand today!' " The article stated that Padar was involved in a case in 2013 in which another officer accused him of falsifying official city attendance records.

¶ 34 Defendant filed his initial postconviction petition in 2013, which was before the April 16, 2014, article became available. Thus, because the article explaining the allegations of Padar's misconduct in these two other cases was not available when defendant filed his initial petition, he was impeded from fully raising his claim that the State knowingly used Padar's perjured testimony at trial. Accordingly, defendant has established cause for his claim that the State knowingly used Padar's perjured testimony. See *People v. Almodovar*, 2013 IL App (1st) 101476, ¶¶ 63-69 (this court agreed with the defendant's argument that he was impeded from fully raising his claim in a prior proceeding because he was not able to properly challenge a detective's credibility without evidence of his pattern of misconduct in other cases, stating that the defendant's lack of access to evidence to support his claim at the time he filed his initial postconviction petition was sufficient to constitute cause for his motion for leave to successive postconviction petition.)

¶ 35 Defendant asserts that Padar testified that he relied on a "hot sheet" as the basis for stopping him and argues that his claim that Padar committed perjury is bolstered by the 2007 letter from the Chicago Police Department, which states that the daily hot sheet "upon which Padar allegedly relied in stopping" him was last printed six months before his arrest on May 27, 2003. The State asserts that defendant previously submitted the 2007 letter in his *pro se* motion for new trial and initial postconviction petition. The State therefore argues that defendant is barred under the doctrine of *res judicata* from asserting his claim that Padar committed perjury at trial. See *People v. Coleman*, 381 Ill. App. 3d 561, 567 (2008) ("[c]laims raised in an original postconviction petition and decided by the circuit court or on direct review have *res judicata* effect").

¶ 36 We acknowledge that the record shows that defendant had the 2007 letter when he filed his initial postconviction petition, as he attached it to his petition and argued that it showed Padar "presented knowingly fabricated evidence to justify a stop." However, because defendant did not have the April 16, 2014, NBCChicago.com article when he filed his initial petition, he did not have any evidence of Padar's conduct in other cases and, therefore, was impeded from fully challenging the credibility of Padar's testimony and from raising his claim that the State knowingly used Padar's perjured testimony at trial. Thus, we disagree with the State that defendant's claim that the State knowingly used Padar's perjured testimony at trial is barred by *res judicata* because he had the 2007 letter from the Chicago Police Department when he filed his direct appeal and initial postconviction petition.

¶ 37 Turning to the prejudice prong, when a conviction is obtained by the State's knowing use of perjured testimony, a defendant's right to due process is violated. *People v. Mitchell*, 2012 IL App (1st) 100917, ¶ 66. If a defendant shows "any reasonable likelihood that the false testimony could have affected the jury's verdict," we must set aside any conviction. *Id.* The prosecutor need not know that the testimony was false because knowledge of a representative or agent of the State is enough. *Id.* The State is charged with " 'knowledge of its agents, including the police.' " *Id.* (quoting *People v. Smith*, 352 Ill. App. 3d 1095, 1100 (2004)).

¶ 38 Prior allegations of police misconduct by a police officer may be relevant to impeach an officer on the issues of bias, interest, motive to testify falsely, or course of conduct by the officer. *People v. Cacini*, 2015 IL App (1st) 130135, ¶ 66; *People v. Porter-Boens*, 2013 IL App (1st) 111074, ¶ 11. However, to be admissible, the allegations of a police officer's prior misconduct may not be general in nature or remote in time. *Porter-Boens*, 2013 IL App (1st) 111074, ¶ 11. In

addition, evidence that is used to impeach " 'must raise the inference that the witness has something to gain or lose by his testimony; the evidence must not be remote or uncertain.' " *Id.* (quoting *People v. Nelson,* 235 Ill. 2d 386, 421 (2009)). A witness may not be impeached on collateral or irrelevant matters and mere evidence of a civil suit charging an officer with some breach of duty unrelated to the defendant's case is inadmissible to impeach the officer. *Cacini,* 2015 IL App (1st) 130135, ¶ 66. Further, proof of arrests, indictments, and other unproven charges are inadmissible to attack a witness's character. *Id*.

¶ 39 We find that defendant has established prejudice for his claim that State knowingly used Padar's perjured testimony.

¶ 40 At the motion to suppress hearing, defendant and Padar's testimony regarding the circumstances of defendant's stop was inconsistent. Defendant testified he was walking through the parking lot when he saw a bag by a dumpster, after which he opened it, took out a knife and screwdriver and then threw them away because he had no use for them. He testified that, when he was about to exit the parking lot, two officers exited a police car, came towards him, and told him there was a warrant out for him. One of the officer's told him "it's a good thing you didn't run 'cause it's three of us and we'da caught you." Padar testified he saw defendant walking on the sidewalk and believed he was wanted on an outstanding warrant. Defendant did not actually have a warrant. According to Padar, after all three officers exited the vehicle and announced their office, defendant started running and threw a knife and screw driver to the ground. At the hearing on January 12, 2007, the State introduced defendant's convictions from 1995 and 1996, which were about, respectively, 12 and 11 years before trial.

¶ 41 When the court denied defendant's motion to suppress, it found the testimony was closely balanced, stating it "believe[d] the officer's testimony is credible" but also that the "testimony is perhaps, perhaps closely balanced." The court then stated that defendant's convictions "may be considered as having an impact on my evaluation of credibility, and so I believe that the officer's testimony is more credible."

¶ 42 The NBCChicago.com article attached to defendant's successive petition describes allegations that, in 2014, Padar testified falsely and, in 2013, provided false information on official city records, cases which occurred respectively, about nine and eight years after he testified at defendant's trial. Thus, given that the trial court found the testimony closely balanced and that it considered defendant's previous convictions from 12 and 11 years before trial when it concluded that Padar was more credible than defendant, we find that any evidence of Padar's misconduct in other cases could have affected the court's credibility determination and probably changed the result on the motion to suppress evidence. See *People v. Mitchell*, 2012 IL App (1st) 100917, ¶ 61 (finding that the defendant showed prejudice under the cause and prejudice test where he could not have discovered the new evidence earlier, the evidence was not cumulative, and the evidence of the officer's prior perjury "probably would change the result on retrial").

¶ 43 Moreover, at trial, Padar testified that defendant "resembled a picture of someone he had seen in a warrant" and that he "reviewed hot list every day — it could have been 10-20 people, including their picture, age, race, and build." However, the 2007 letter from the Chicago Police Department attached to defendant's successive petition contradicted Padar's testimony on this issue because the letter stated that the "daily hot sheet was last printed on May 27, 2003," which was about six months before defendant's arrest. Taking all allegations as true and considering

this contradiction between the 2007 letter and Padar's testimony, had the trial court known about the other allegations of Padar's misconduct described in the article, including that he provided false testimony in one case and falsified official records in another, there is a reasonable likelihood that the trial court's judgment could have been affected, and thus, the result of the trial would have been different.

¶ 44 Accordingly, defendant has demonstrated that his claim that the State knowingly used Padar's perjured testimony based on the April 16, 2014, NBCChicago.com article so infected the trial that the resulting conviction violated due process. Defendant has therefore shown prejudice for his claim.

¶ 45 The State contends that the information contained in the NBCChicago.com article is irrelevant. It argues that the allegations about Padar's misconduct contained in the article are too remote in time because Padar was accused of lying in the Glenview case in 2014 and of falsifying city records in 2013, which occurred about six and seven years after he testified in defendant's case. However, as previously discussed, at the motion to suppress hearing, the trial court considered defendant's convictions from about 12 and 11 years before trial when it found the testimony "closely balanced" and Padar more credible than defendant. Accordingly, given these particular circumstances, we cannot find that the article is irrelevant or the allegations contained therein are too remote.

¶ 46 The State further argues that the NBCChicago.com article is irrelevant because it is uncertain, as it does not disclose the outcome of the two cases. With respect to the case involving allegations that Padar testified falsely, the trial judge in that case expressly found that Padar and the other officers lied on the stand. The article reported that the judge stated: "Obviously this is

very outrageous conduct *** State, I expect you to do something about this, and to talk to all the superiors involved in this case. All of the officers lied on the stand today!" The article reported that all five officers "have been stripped of their police powers and placed on leave, pending investigations of the Glenview case." Accordingly, even though the article does not describe the outcomes of any civil or criminal cases involving Padar's alleged misconduct, given the trial court's findings as reported in the article, we cannot find that the article is irrelevant or that it is clear from the petition and attached documentation that further proceedings are unnecessary.

¶ 47 The State asserts that the allegations in the two cases described in the article are factually different than defendant's case, as one case involved a "payment dispute" between Padar and another officer over a home remodeling job and the other case involved a traffic stop. However, the case about the "payment dispute" also involves allegations that Padar falsified official city records. The case about the traffic stop involves allegations that Padar lied when he testified at trial about the circumstances surrounding a stop and subsequent search and arrest of the defendant in that case. Here, Padar also testified about the circumstances surrounding defendant's stop and subsequent arrest and defendant asserts that Padar lied when doing so. Thus, we disagree with the State that the allegations described in the article are irrelevant because they are factually different from defendant's case.

¶ 48 In sum, defendant has established cause and prejudice for his claim that his due process rights were violated when the State knowingly used Padar's perjured testimony. We cannot find that it is clear from defendant's successive petition and attached documentation that further proceedings are unnecessary. We therefore reverse the trial court's order denying defendant

leave to file his successive postconviction petition and remand for second stage proceedings and direct the court to appoint counsel.

¶ 49 For the reasons explained above, we reverse the judgment of the circuit court and remand with instructions.

¶ 50 Reversed and remanded.