2019 IL App (2d) 161095-U
No. 2-16-1095
Order filed March 5, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 14-CF-1554
EARNEST T. JEFFRIES,	)	Honorable Donald M. Tegeler Jr.,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied defendant's motion for testing under section 116-3: especially in light of the strong trial evidence, the matching of a hair at the scene with an unknown person would not significantly advance defendant's claim of innocence.

¶ 2 Defendant, Earnest T. Jeffries, appeals from the trial court's denial of his motion pursuant to section 116-3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/116-3 (West 2014)) for deoxyribonucleic acid (DNA) testing of a hair from a glove found at the scene of the offenses of which defendant was convicted. The parties agree that the court erred in denying the motion for want of jurisdiction. On the merits, defendant asserts that "DNA testing of the hair

strand has the potential to produce new, noncumulative evidence material to the defendant's claim of actual innocence." The State responds that defendant failed to establish that such testing had the potential to produce evidence material to a claim of actual innocence. We agree with the State; we accordingly affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on 11 counts relating to an August 28, 2014, incident in which two men forced their way into apartment D at 855 Richard Street in Aurora, where K.C. Phongsavath and Tyrone Davis were sleeping. The counts relevant to this appeal were home invasion (intentionally causing injury) (720 ILCS 5/19-6(a)(2) (West 2014)) and armed robbery (bludgeon) (720 ILCS 5/18-2(a)(1) (West 2014)). Codefendant, Steven L. Simmons, entered into a plea agreement in which he admitted that he was one of the intruders and agreed to testify against defendant.

¶ 5 Defendant had a jury trial. The evidence at trial tended to show that, on August 28, 2014, at around 3:45 a.m., defendant and Simmons came to the outside door of Phongsavath's residence, a rental unit with a door to the outside, two levels, and an interior staircase. One was carrying what was apparently a BB- or Airsoft gun. Both were masked. The two started pounding on the door, shouting that they were Aurora police officers with a warrant. They forced the front door open, climbed the stairs, and then forced the bedroom door open. They ordered Davis to give them money and drugs. After they discovered that Davis had lied to them by telling them that they would find money outside in a car, they hit him repeatedly, tied him up with stereo cables, and searched the bedroom. They pulled the bedcovers off Phongsavath, who was unclothed, and tied her hands with the cord of a curling iron. The intruders left the apartment, taking with them a Galaxy tablet and $2800 in cash. Davis chased them. He saw

them take off their gloves, throw them to the ground, and then run in opposite directions. Davis tried to chase the one who had the cash, but the man eluded him. Police and paramedics arrived at the scene in response to a call from Phongsavath. They treated Davis for a gash on his head, broken teeth, cuts to his hands and feet, and bruises that included bruised ribs.

¶ 6 Neither Davis nor Phongsavath could say what the intruders looked like beyond their sex, build, and race. Phongsavath said that she knew that one intruder was black only because one of the gloves he was wearing was missing its thumb.

¶ 7 One of the officers dispatched in response to Phongsavath's call, Dominic Tamberelli, noticed a vehicle on the street as he neared 855 Richard Street. He illuminated the vehicle with his spotlight and saw two black males in the front seats. The vehicle accelerated away, and the officer pursued. The chase ended when the driver leapt from the vehicle and escaped on foot; Tamberelli was uncertain what happened to the passenger he believed he had seen. The vehicle was registered to defendant.

¶ 8 Police, searching the apartment, found a large piece of a latex glove on the staircase near a piece of a BB- or Airsoft gun. When forensic scientists processed the glove piece for DNA testing, they noticed what appeared to be a hair in the package with the glove. Tanis Wildhaber-Pfoser, an Illinois State Police Crime Laboratory forensic scientist, testified to the results of the DNA testing of the glove piece:

> "In that I had a mixture of human DNA profiles that was determined to be a mixture of at least two people. *** There was a major male profile that matched the DNA profile of Tyrone Davis and does not match the DNA profile of [defendant]."

Wildhaber-Pfoser did not report results for the minor components of the mixture; no testing was done of the hair.

¶ 9 The police further found a small piece of a glove snagged on the damaged entrance doorframe, another small piece on the stairs, and yet another small piece on the kitchen wall. They found a box of latex gloves on the dresser in the bedroom. They found damaged latex gloves across the street from Phongsavath's apartment and pieces of latex gloves and two damaged latex gloves in the vehicle registered to defendant. DNA extracted from a swab of one of the gloves found across the street matched Simmons's DNA profile in a law-enforcement database. DNA extracted from a swab of one of the gloves found in defendant's vehicle matched defendant.

¶ 10 The State's direct evidence that defendant was one of the intruders came entirely from Simmons's testimony. Circumstantial evidence of his guilt came primarily from his vehicle's involvement in the chase and his DNA on the glove in his vehicle.

¶ 11 The jury found defendant guilty of three counts of home invasion, two counts of armed robbery, two counts of unlawful restraint, one count of aggravated fleeing or attempting to elude a peace officer, and one count of unlawful possession of more than 2.5, but not more than 10, grams of cannabis. It acquitted him of a count of aggravated battery.

¶ 12 The court sentenced defendant to two 26-year terms of imprisonment for home invasion and armed robbery and two 3-year terms of imprisonment for unlawful restraint and aggravated fleeing or attempting to elude a peace officer, all to be served concurrently. It imposed a jail sentence for cannabis possession. Defendant filed a timely notice of appeal on December 4, 2015. He challenged only his sentences. We ultimately affirmed those sentences on May 22, 2018. *People v. Jeffries*, 2018 IL App (2d) 151194-U.

¶ 13 On September 12, 2015, defendant filed a *pro se* "Motion for DNA Database Search." He noted that the forensic scientists had observed a hair on the glove piece from the stairs and

had preserved the hair, but had not subjected it to DNA testing. He asserted that, "[i]f the DNA test results of said hair shows genetic profile of a person other than [him], or *** SIMMONS, and or the two victoms [*sic*]," they "could prove him innocent." The court denied the motion on the basis that it lacked jurisdiction due to the appeal's pendency. Defendant filed a timely appeal of that denial.

¶ 14 II. ANALYSIS

¶ 15 On appeal, the parties agree that the court erred in ruling that it lacked jurisdiction to consider the motion. See *People v. Savory*, 197 Ill. 2d 203, 210-11 (2001) (a motion under section 116-3 of the Code initiates a separate proceeding and a denial of such a motion is an appealable final judgment). They agree that the sole issue is whether defendant *prima facie* established that the evidence produced by testing the hair would be "materially relevant to *** [an] assertion of actual innocence," which section 116-3(c)(1)(i) of the Code (725 ILCS 5/116-3(c)(1)(i) (West 2014)) mandates as a condition for the court to order testing.

¶ 16 Defendant asserts that, because he alleged that the hair was preserved in the State's exhibit and " 'could prove him innocent,' " he "established a *prima facie* case for DNA testing." The State responds, among other things, that, even if "the hair strand did not match the parties involved, it would not have significantly undercut any of the evidence at trial because it could have come from any person that visited the victims in that apartment," and thus it "could not have ruled defendant out as one of the intruders." In reply, defendant asserts that a "finding that the hair strand originated from someone other than the defendant, Simmons, or the victims could seriously undermine Simmons' version of the incident and *** damage his credibility [beyond the bias that might result from his favorable plea agreement]. We deem that the State's analysis is essentially correct, and we affirm.

¶ 17 Section 116-3(c)(1)(i) provides that the court "shall allow the [forensic] testing [a defendant seeks] *** upon a determination" that the "result of the testing has the scientific potential to produce new, noncumulative evidence (i) materially relevant to the defendant's assertion of actual innocence." 725 ILCS 5/116-3(c)(1)(i) (West 2014)). "[E]vidence which is 'materially relevant' to a defendant's claim of actual innocence is simply evidence which tends to significantly advance that claim," and it need not have the potential to completely vindicate the defendant. *Savory*, 197 Ill. 2d at 213 (quoting 725 ILCS 5/116-3(c)(1) (West 1998)). Whether testing would generate evidence that would tend to significantly advance the defendant's claim is not a question that can be answered "in the abstract." *Savory*, 197 Ill. 2d at 214. Instead, answering it "requires a consideration of the evidence introduced at trial, as well as an assessment of the evidence defendant is seeking to test." *Savory*, 197 Ill. 2d at 214. Our review of a trial court's denial of a motion for DNA testing under section 116-3 is *de novo*. *People v. O'Connell*, 227 Ill. 2d 31, 35 (2007). We may affirm the court's judgment on any basis that the record supports and are not limited by the court's reasoning. *People v. LaPointe*, 2018 IL App (2d) 160432, ¶ 20.

¶ 18 We conclude that testing of the hair could not significantly advance an actual-innocence claim by defendant. The State's case was strong to begin with and the hair is not likely to yield evidence to undermine that case.

¶ 19 First, the State's evidence at trial was strong. To be sure, Simmons's favorable plea agreement made him a potentially biased witness. However, his testimony was corroborated by the presence of defendant's vehicle near the scene and its driver's flight from Tamberelli. It was further corroborated by the presence of torn latex gloves, similar to those used in the home invasion, in defendant's vehicle and the presence of defendant's DNA on one of those gloves.

¶ 20 Second, hairs are too readily shed and too likely to be accidentally moved to provide reliable evidence of the intruders' identity. We cannot assume that Phongsavath, Davis, and the intruders were the only possible sources of hair in the apartment. Moreover, we cannot assume that the hair got onto the glove in Phongsavath's apartment rather than in defendant's vehicle or even in his residence. Thus, the hair's failure to match Phongsavath, Davis, Simmons, or defendant would not significantly advance a claim that someone other than defendant entered the apartment with Simmons. We therefore conclude that, although the court erred in denying the motion for lack of jurisdiction, its denial was nevertheless proper. Defendant did not make a *prima facie* case that testing of the hair could produce results materially relevant to any assertion of his actual innocence.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we affirm the judgment of the circuit court of Kane County denying defendant's motion for DNA testing. 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 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 23 Affirmed.