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2019 IL App (3d) 170486-U

Order filed June 26, 2019  
Modified upon denial of rehearing August 9, 2019

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-17-0486 Circuit No. 01-CF-292
CHRISTOPHER D. COX,	)	Honorable Paul P. Gilfillan, Judge, Presiding.
Defendant-Appellant.	)	

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices Carter and Wright concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The court did not err in denying the defendant leave to file a successive postconviction petition.
- ¶ 2 The defendant, Christopher D. Cox, appeals from the order of the Peoria County circuit court that denied the defendant leave to file a successive postconviction petition. The defendant argues the court erroneously denied his motion because it established sufficient cause and prejudice to permit the filing of a successive postconviction petition.

¶ 3

## I. BACKGROUND

¶ 4

At the outset, we note that we have previously described the facts of the defendant's trial in his direct appeal. *People v. Cox*, No. 3-02-0323 (2003) (unpublished order under Illinois Supreme Court Rule 23). Therefore, the facts of the instant case are limited to those necessary to decide whether the court erred in denying the defendant's motion for leave to file a successive postconviction petition.

¶ 5

On the morning of March 21, 2001, Qwanda Trapps, Krista Richardson, and Horace Clark were sitting in a vehicle parked near the Harrison Homes in Peoria. The front of the vehicle faced the buildings and the rear of the vehicle was positioned near the sidewalk.

¶ 6

Trapps testified that she saw the defendant walk toward the vehicle from across the parking lot. At the time, Trapps was sitting in the driver's seat. The defendant walked past the driver's side of the vehicle. After the defendant passed out of her view, Trapps heard gunshots and felt broken glass. During a subsequent police interview, Trapps identified the defendant from a photographic lineup as the person that she saw walk by the vehicle before the shooting.

¶ 7

Richardson testified that she sat in the front passenger seat of the vehicle, Trapps sat in the driver's seat, and Clark sat in the rear passenger seat behind Trapps. Richardson said that approximately 20 minutes after Clark entered the vehicle, she saw an individual walk across the street toward their location. This individual "walked across the street behind the building, and then \*\*\* somebody else walk[ed] back across the street and walk[ed] behind another building. Then [Richardson saw] somebody walk past the car." Richardson clarified that the individual that initially walked past from across the street was the same person who she saw walk past the vehicle the second time. Richardson described this individual as "light-skinned with hair all over his head." This individual stopped on the driver's side of the vehicle near the trunk. Richardson

turned away for a moment, and when she looked back, she saw that the individual had a scarf “on his face.” Richardson saw what looked like fire, heard gunshots and ducked down on the floor on the passenger side of the vehicle. When the State asked if Richardson actually saw the person that fired the shots, Richardson said “I don’t know.” Richardson explained that the shots came from behind the vehicle, and only the individual wearing the scarf was around the vehicle at that time. After hearing the shots, Richardson started the vehicle, put it in drive, depressed the accelerator, and drove from the scene, striking a vehicle in the process. Trapps and Richardson then drove to Methodist Hospital.

¶ 8 A Peoria police officer spoke with Richardson at the hospital and another officer transported her to the police station for an interview. At the police station, Richardson described the shooting suspect as “[I]ight-skinned, hair all over his head,” and identified the defendant as the shooting suspect from a photographic lineup. Richardson acknowledged that she was not sure if she actually saw the person who fired the shots. However, Richardson said that there was no one else around the vehicle at the time of the shooting. Richardson twice denied seeing the individual who she had identified to the police as the shooter in the courtroom. After noting that the interview occurred in the morning a few hours after the shooting, Richardson agreed that she was “able to identify the individual who did the shooting.”

¶ 9 Peoria police officer Michael Eddlemon testified that he interviewed Trapps and Richardson after the shooting. Trapps told Eddlemon that she knew and could identify the shooter. Trapps gave Eddlemon a nickname for the shooter, and Eddlemon compiled a six-person photographic lineup. Trapps selected the defendant’s photograph from the lineup.

¶ 10 After speaking with Trapps, Eddlemon interviewed Richardson. Eddlemon showed Richardson the same photographic lineup that he showed Trapps and asked “if there was a

picture of the person that shot Horace Clark in one of these photographs.” Richardson identified the same photograph of the defendant as the shooter.

¶ 11 During deliberations, the jury requested a transcript of Richardson’s testimony “about person[s] or people around the car” and a map of Harrison Homes. The court denied both requests. Thereafter, the foreperson informed the court that the jury was deadlocked “at seven and five.” The court sent the jury home for the night. The next day, the jury found the defendant guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 2000)). The court sentenced the defendant to 50 years’ imprisonment. On direct appeal, we affirmed the defendant’s conviction and sentence. *Cox*, No. 3-02-0323.

¶ 12 On September 13, 2004, the defendant filed a *pro se* postconviction petition. The petition advanced to a third-stage hearing where the court denied the petition. On appeal, we affirmed the court’s denial. *People v. Cox*, No. 3-06-0244 (2008) (unpublished order under Illinois Supreme Court Rule 23).

¶ 13 On April 7, 2017, the defendant filed a motion for leave to file a successive postconviction petition. The motion argued that the defendant possessed a police report that the State had disclosed 12 years after his trial, and he would suffer prejudice if he were not allowed to bring the claim. An attached postconviction petition alleged that the State had violated the rule prescribed by *Brady v. Maryland*, 373 U.S. 83 (1963), when it failed to disclose the police report to the defense before trial. The police report at issue documented an officer’s interview with Richardson. According to the report, the interview occurred shortly after the incident in a hospital waiting room. The redacted police report states

“I spoke with \_\_\_ who said that \_\_\_ was with a \_\_\_ and the vic in \_\_\_ car parked in the area of Seibold and Griswold. \_\_\_ said that an unknown black male,

the suspect, walked past the car two times and that \_\_\_ then heard what \_\_\_ believed to be 4 shots fired at the car. \_\_\_ said that \_\_\_ ducked down to the floorboard on the pass side and yelled at \_\_\_ to go. \_\_\_ said that \_\_\_ did not do anything and that \_\_\_ then pushed down onto the gas pedal of the car and that \_\_\_ then drove out of the area, striking another veh in the process. \_\_\_ said that \_\_\_ believes \_\_\_ heard 2 more shots as they were leaving. \_\_\_ said that they then drove to Methodist Hospital with Clark.

Richardson said that after Clark was taken inside \_\_\_ later identified as \_\_\_ left to go pick up relatives of Clark. See also P Jones' supp report.

At 0245 hrs I transp \_\_\_ to the station and placed \_\_\_ into interview room #5. I waited with \_\_\_ until the arrival of CID personnel.”

In a supporting affidavit, the defendant averred that he did not receive the police report in the pretrial discovery and he obtained it through a December 19, 2016, Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)) request to the Peoria County State's Attorney's office.

¶ 14 The court denied the defendant's request for leave, finding the defendant's allegation of a *Brady* violation was refuted by the supporting exhibit because the exhibit was consistent with Richardson's trial testimony and second statement to the police. The defendant appeals.

¶ 15 II. ANALYSIS

¶ 16 The defendant argues the court erred in denying his motion for leave to file a successive postconviction petition. The defendant contends that his motion alleged sufficient cause and prejudice to justify leave. Specifically, the State violated *Brady* when it did not disclose a police report that documented an interview with Richardson. The defendant discovered this report

nearly 12 years later through a FOIA request, and the seclusion of the report prejudiced the defendant because it included impeachment evidence. After reviewing the defendant's pleadings and the trial record, we find that the defendant did not establish prejudice to justify granting leave to file a successive postconviction petition.

¶ 17 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2016)) contemplates the filing of a single postconviction petition. *People v. Ortiz*, 235 Ill. 2d 319, 328 (2009). Any claim not raised in the original or an amended petition is deemed waived. 725 ILCS 5/122-3 (West 2016). However, this waiver rule will be relaxed where a defendant establishes cause and prejudice for his failure to bring the claim in a prior petition. *Ortiz*, 235 Ill. 2d at 329. Cause is an objective factor external to the defendant that impeded counsel's efforts to raise the claim in a prior proceeding. *Id.* The defendant must also show prejudice, that is the claimed error "so infected the entire trial that the resulting conviction or sentence violates due process." *People v. Pitsonbarger*, 205 Ill. 2d 444, 464 (2002). We review *de novo* the circuit court's ruling on the defendant's motion for leave. *People v. McDonald*, 405 Ill. App. 3d 131, 135 (2010).

¶ 18 The defendant argues the court erred in denying his motion for leave because he sufficiently alleged cause and prejudice to show the State committed a *Brady* violation. "Under *Brady*, the State must disclose evidence favorable to the accused and ' "material either to guilt or to punishment." ' " *People v. Jarrett*, 399 Ill. App. 3d 715, 727 (2010) (quoting *People v. Harris*, 206 Ill. 2d 293, 311 (2002), quoting *Brady*, 373 U.S. at 87). To establish a *Brady* violation, the defendant must show that the: (1) evidence that the State failed to disclose is favorable to the accused because it was either exculpatory or impeaching, (2) State willfully or inadvertently suppressed this evidence, and (3) accused was prejudiced because the evidence is material to the juror's determination of his guilt. *People v. Beaman*, 229 Ill. 2d 56, 73-74 (2008). "Evidence is

material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *People v. Harris*, 206 Ill. 2d 293, 311 (2002). This materiality test is not a test of the sufficiency of the evidence. *Id.* Instead, the defendant must show that “ ‘the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.’ ” *People v. Coleman*, 183 Ill. 2d 366, 393 (1998) (quoting *Kyles v. Whitley*, 514 U.S. 419, 435 (1995)).

¶ 19 Here, the State’s case was predicated on Trapps’s and Richardson’s identifications of the suspect who shot Clark. According to their trial testimony, both Trapps and Richardson saw an individual walk past Trapps’s vehicle before they heard gunshots. Trapps testified that this individual was the defendant. Trapps had also previously selected the defendant’s picture from a photographic lineup and identified the defendant as the shooter during a police interview. In her testimony, Richardson described the appearance of the individual she had observed standing at the back of the vehicle before the shooting. Richardson then said that she did not actually see the shooter, and that the individual that was wearing the scarf was the only individual around the vehicle when the shots were fired. Richardson also said that the shooter was not in the courtroom. Richardson’s identification testimony was contradicted by her prior statement to the police in which she identified the defendant as the shooter from a photographic lineup.

¶ 20 The undisclosed police report is mostly consistent with Richardson’s testimony regarding the events surrounding the shooting. Specifically, Richardson told the officer that an “unknown black male” walked by the vehicle she was sitting in, and then she heard the gunshots. This is consistent with Richardson’s testimony that she did not know if she saw the shooter. However, like this part of Richardson’s testimony, it is contradicted by Richardson’s identification of the defendant as the shooter from the later police interview. As a result, Richardson’s statement in

the police report does little to further degrade her credibility as her trial testimony both indicated that she could and could not identify the shooter. Moreover, it does not rebut Trapps's consistent identifications of the defendant as the shooter. Therefore, because the police report would not cause the jury to view the defense in a different light, the defendant's motion did not allege the prejudice component of *Brady*. Accordingly, the court did not err in denying the defendant leave to file a meritless successive postconviction petition.

¶ 21

### III. CONCLUSION

¶ 22

The judgment of the circuit court of Peoria County is affirmed.

¶ 23

Affirmed.