

No. 1-10-3052 & 1-10-3053 (Cons.)

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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.)	99 CR 26020
)	
JEREMIAH WRIGHT and ELIJAH THREATT,)	Honorable
)	Michael Brown,
Petitioners-Appellants.)	Judge Presiding.

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Sterba and Pierce concurred in the judgment.

ORDER

- ¶ 1 *Held:* Because the defendants showed a reasonable likelihood that they would have achieved a better result at trial if their attorneys had introduced evidence that the detective who elicited their confessions beat suspects in other cases, the trial court erred when it dismissed their postconviction petitions without an evidentiary hearing.
- ¶ 2 This appeal involves the dismissal of a postconviction petition at the second stage of postconviction proceedings. Following a trial with two separate juries, one jury found Jeremiah Wright guilty of murder, and a second jury found Elijah Threatt guilty of murder. This court

affirmed the convictions on the direct appeal. *People v. Threatt*, Nos. 1-05-2783 & 1-05-2909 (consolidated) (2008) (unpublished order under Supreme Court Rule 23). Jeremiah and Elijah filed postconviction petitions with the assistance of counsel, arguing that they did not have effective assistance of counsel at trial. The trial court dismissed the petitions without holding evidentiary hearings. Jeremiah and Elijah now appeal.

¶ 3 We find that Jeremiah and Elijah made a substantial showing that their attorneys' representation of them did not meet an objective standard of reasonableness, and that but for counsel's errors, they had a reasonable probability of achieving better results. Jeremiah and Elijah showed that, at the hearing on their motions to suppress statements, their attorneys failed to present available evidence that the officers who elicited confessions from Jeremiah and Elijah beat and abused suspects in other cases. The evidence could have persuaded the trial court to suppress the statements signed by Jeremiah and Elijah, and without the statements, the evidence probably would not have convinced the juries to convict Jeremiah and Elijah. Accordingly, we reverse the trial court's judgments and remand the cases for evidentiary hearings on the allegations of the postconviction petitions.

¶ 4 BACKGROUND

¶ 5 On October 5, 1999, Norman Blasco went to see Jacquilla Goodwin in a home she shared with Delores Goodwin, Gayle McGee, and McGee's daughter, Tainika Miller. Jacquilla was not home, so Blasco left and went to his truck. A few minutes later, McGee heard a sound like firecrackers. When she went to the window she saw some men running away from Blasco's truck. Police called to the scene found Blasco in his truck, dead from multiple gunshot wounds. At the

police station that night, McGee and Miller signed the backs of photographs of Jeremiah and Elijah.

¶ 6 Jeremiah and Elijah soon heard that police were looking for them. On October 14, 1999, Jeremiah and Elijah went to the police station, where Detectives Kriston Kato and Sam Cirone questioned them separately. Although both Jeremiah and Elijah initially said that they did not know anything about the murder, both signed confessions a few hours later. Prosecutors charged Jeremiah and Elijah with first degree murder.

¶ 7 Motion to Suppress

¶ 8 Both Jeremiah and Elijah moved to suppress their statements. In their motions, both Jeremiah and Elijah alleged that they suffered from severe learning disabilities that left them unable to understand their constitutional rights, and that the detectives hit them and used other physical coercion to get Jeremiah and Elijah to sign the confessions. Defense counsel subpoenaed the Office of Professional Standards (OPS) records of complaints against Kato and Cirone. The trial court granted the prosecutor's motion to quash the subpoenas.

¶ 9 A doctor who interviewed Elijah found him fit for trial and able to understand his rights. However, a neuropsychologist reported that Elijah "reveal[ed] evidence of intellectual impairment, multiple cognitive deficits, and severely defective academic skills, which collectively constitute *** a severe functional disability." The psychologist who examined Jeremiah found:

"[Jeremiah] suffers from mild mental retardation. *** While this condition does not rise to the level of a defense from prosecution, *** his condition *** did contribute to impaired judgment and diminished effective cognitive and behavioral controls."

¶ 10 Elijah swore to the accuracy of the facts stated in his motion to suppress. In the written motion, Elijah said that in the interrogation room, Cirone struck Elijah's head four or five times, causing cuts and bruises. Kato talked to Elijah for a while, and then an assistant State's Attorney entered the interrogation room. When Elijah started to tell the assistant State's Attorney that Cirone beat him, the assistant State's Attorney left the room. Cirone returned and slammed Elijah against a wall and said, "I'd have killed you on the scene. I'd have killed you fucking n____s!"

¶ 11 Jeremiah's sister, Teresa Wright, testified that the morning after the arrest, Jeremiah called Teresa from jail and asked her to bring him his inhaler for his asthma. He told her police had beaten him.

¶ 12 A doctor who saw Jeremiah on November 12, 1999, testified that Jeremiah said he had headaches and blurry vision because of an altercation with police at the time of his arrest. The doctor diagnosed Jeremiah as having suffered a concussion, but he found no outward manifestations of the injuries Jeremiah reported.

¶ 13 Cirone and Kato testified that they did not hit or otherwise coerce Jeremiah and Elijah to sign the confessions. According to Cirone and Kato, Jeremiah and Elijah confessed after the detectives conducted lineups in which some persons identified Jeremiah and Elijah. The officers who supervised the jail's intake of Jeremiah and Elijah following their confessions both testified that they saw no outward signs of injury, and neither Jeremiah nor Elijah complained of beatings. The assistant State's Attorney who wrote out the statements Jeremiah and Elijah signed said that he, too, saw no injuries, and neither Jeremiah nor Elijah complained of mistreatment. The assistant State's Attorney said neither Jeremiah nor Elijah could read the handwritten statements, so he read the

statements to them before they signed.

¶ 14 The trial court found Cirone and Kato credible, so it denied the motions to suppress.

¶ 15 Trial

¶ 16 The trial court tried the two defendants simultaneously, but separately, before two juries.

¶ 17 Tainika Miller testified that shortly after Blasco left Goodwin's home, Miller heard someone outside say, "give me your fucking money." She then heard a gunshot and she ran to a kitchen window with McGee. Miller saw Jeremiah and Elijah, two young men she knew well, demand money from Blasco, and she saw them shoot before they ran off. She saw Blasco back the truck into a lamppost. Miller went to the truck and saw Blasco bleeding profusely. A woman Miller could not name reached in and turned off the truck.

¶ 18 The defense presented evidence that Miller told police Miller turned off the truck. The physical evidence showed that the truck hit no lamppost. Police at the scene found the truck backed into a parked car.

¶ 19 McGee testified that she did not remember whether Miller was home at the time of the shooting. When McGee got to the kitchen window, she saw two men running from the truck. She did not recognize the men. Police showed her a number of photographs at the police station. She signed the photographs of Jeremiah and Elijah, at an officer's request, to indicate that she knew Jeremiah and Elijah. She did not say to police that she saw them at the time of the murder.

¶ 20 The trial court allowed the State to impeach McGee with the testimony of Cirone. Cirone testified that McGee, on the night of the murder, told Cirone that when she heard the gunshots, she saw two men by the truck, and she thought the men looked like Jeremiah and Elijah. She signed the

photographs to indicate that those pictures showed the men she knew who looked like the two men she saw running from the scene. Cirone further swore that McGee told him she could not testify against Jeremiah and Elijah because they had relatives who lived next door to McGee, and she feared that their families would hurt McGee's family.

¶ 21 McGee testified that she did not fear Jeremiah and Elijah, and she never said to Cirone that she feared Jeremiah and Elijah. She did not tell Cirone she saw persons who looked like Jeremiah and Elijah at the crime scene, because she could not see the offenders well enough to describe them at all.

¶ 22 Cirone testified that Jeremiah confessed to the crime, and then agreed to have an assistant State's Attorney handwrite Jeremiah's statement. Kato testified that Elijah confessed and agreed to have an assistant State's Attorney handwrite Elijah's statement. Each defendant's jury heard only the confession of that defendant.

¶ 23 The assistant State's Attorney read into the record both of the confessions that he wrote out and the defendants signed. According to the written statements, both Jeremiah and Elijah said, in nearly identical terms, that they are cousins, and on October 5, 1999, they planned to commit robbery. Jeremiah had a black automatic handgun and Elijah had a revolver. They saw a "white dude" in a truck, and they decided to stick him up. They had seen him in the neighborhood and knew he would have either drugs or money on him. As they approached the truck they saw the man talking to a woman. They took out their guns and pointed them at the man. They told the man to give them all his money and drugs. The man gave them some change, but nothing more, and Jeremiah's gun discharged. Both Jeremiah and Elijah fired several more rounds into the truck. They ran while firing

more shots at the truck. According to his written statement, Elijah said that he took his gun apart with a screwdriver and "threw the pieces of the gun everywhere." Both Jeremiah and Elijah added that police treated them well.

¶ 24 Betty Vortes testified for the defense that Jeremiah and Elijah spent the evening of October 5, 1999, at her birthday party. Jeremiah corroborated Vortes's testimony. He added that Cirone handcuffed him to a wall in the cold interview room for questioning. When Jeremiah asked for water, Cirone gave him a cup with something floating in the water. Jeremiah refused to drink it, and Cirone then threw the water on Jeremiah, and pressed Cirone's elbow into Jeremiah's neck, leaving Jeremiah unable to breathe.

¶ 25 Kato brought Jeremiah's inhaler and a sweatshirt into the interview room and put them out of Jeremiah's reach. Kato told Jeremiah he could have the inhaler and the sweatshirt if he confessed. Kato and Cirone told him what to say to the assistant State's Attorney, and they told Jeremiah not to tell the assistant State's Attorney about the coercion.

¶ 26 The juries found both Jeremiah and Elijah guilty of first degree murder. The trial court sentenced both of them to 55 years in prison.

¶ 27 Appeal

¶ 28 Jeremiah and Elijah appealed, and this court consolidated the appeals. Both Jeremiah and Elijah argued that the trial court committed reversible error at the time of Cirone's testimony, when the court refused to instruct the jury immediately that the jury should use Cirone's testimony about McGee only for its bearing on the credibility of McGee's trial testimony, and not as substantive evidence that McGee saw persons who looked like Jeremiah and Elijah at the scene of the shooting,

or that McGee feared Jeremiah and Elijah. This court affirmed the convictions based partly on its acceptance of the State's argument that the complete set of jury instructions included the appropriate limitation on the use of Cirone's testimony about McGee for impeachment only, and not as substantive evidence. *Threatt*, Nos. 1-05-2783 & 1-05-2909, at 34.

¶ 29

Postconviction Petitions

¶ 30 On October 27, 2009, both Jeremiah and Elijah, with the assistance of counsel, filed postconviction petitions. Both presented affidavits from Daniel Gasca, Tony Bey, and Keith Washington, who swore that Detective Kato and his partner had beaten and abused them in interrogations that took place in 1987, 1988 and 1989. Jeremiah and Elijah also supported the postconviction petitions with an extensive newspaper article, published in the Chicago Reader, that detailed evidence that Detective Kato and several of his partners beat and abused many other suspects in the course of interrogations, and lied about the beatings in court. Jeremiah and Elijah claimed that the affidavits and article supported their claims that Kato and Cirone coerced false confessions from them.

¶ 31 Jeremiah and Elijah obtained an affidavit from McGee, who swore that when Blasco was shot, Miller was in the front of the house with Goodwin, and only McGee was in the kitchen. Only the kitchen window offered a view of the scene of the shooting. When McGee peeked out she saw three persons in dark clothing running away from Blasco's truck, and she could not see any of them clearly enough to give any useful description. McGee yelled to Miller that Blasco had been shot. Miller did not come to the kitchen or reach any place where she could see the crime scene until then, after all of the offenders had fled.

¶ 32 Jeremiah and Elijah argued that the trial court denied them fair trials when it quashed their subpoenas for OPS records of allegations that Kato and Cirone beat and abused other suspects. Jeremiah and Elijah further argued that they received ineffective assistance of counsel when their attorneys failed to discover and present evidence of Kato's and Cirone's other beatings for their motions to suppress their statements.

¶ 33 The State moved to dismiss the petitions, arguing that Jeremiah and Elijah could have presented the affidavits from other victims of Kato and his partners at the hearing on the motion to suppress, and trial counsel for both Jeremiah and Elijah made strategic decisions not to call those witnesses.

¶ 34 The trial court found that the affidavits about other beatings and the Reader article would not have affected the ruling on the motion to suppress, and counsel made strategic decisions not to present the evidence at the hearing on the motion to suppress. The court granted the State's motion to dismiss the postconviction petitions. Jeremiah and Elijah now appeal.

¶ 35 ANALYSIS

¶ 36 In this appeal, Jeremiah and Elijah rely solely on their arguments that they received ineffective assistance of counsel at trial. "To support a claim of ineffective assistance of counsel, a defendant must allege facts demonstrating that his attorney's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *** Because the trial court dismissed defendant's petition without holding an evidentiary hearing, we review that dismissal *de novo*." *People v. Patterson*, 192 Ill. 2d 93, 107 (2000).

¶ 37 The State argues first that Jeremiah and Elijah waived their argument because they failed to raise the issues on the direct appeal. But both Jeremiah and Elijah rely on affidavits and an article their attorneys failed to make part of the record on the direct appeal. Because the original record did not contain the full evidentiary basis for the claim of ineffective assistance of counsel, Jeremiah and Elijah have appropriately raised their arguments in their postconviction petitions, and they have neither waived nor forfeited the issue of ineffective assistance of counsel. *People v. Tenner*, 175 Ill. 2d 372, 378 (1997).

¶ 38 Jeremiah and Elijah contend that competent trial counsel would have discovered and presented the evidence postconviction counsel found that shows the pattern of Kato and his partners coercing confessions. A quick internet search uncovered the Reader article from 1991 that detailed evidence of the practices of Kato and his partners, practices which included beatings of suspects to induce them to sign confessions, and perjury by Kato and his partners at trial about the means used to obtain the confessions. That article helped postconviction counsel find Gasca, Bey and Washington, who signed affidavits detailing their experiences with beatings and other forms of coercion used by Kato and his partners. A further search of Lexis produced more cases that include evidence of criminal misconduct by Kato. The cases include *People v. McDaniel*, 326 Ill. App. 3d 771, 777-78 (2001); *People v. West*, 263 Ill. App. 3d 1041, 1046 (1994); *People v. Prince*, 288 Ill. App. 3d 265, 271 (1997); *People v. Murray*, 254 Ill. App. 3d 538, 543-44 (1993); *People v. Shelton*, 264 Ill. App. 3d 763, 766 (1993); *Wallace v. City of Chicago*, 440 F.3d 421, 423 (7th Cir. 2006); *Seaton v. Kato*, No. 94 C 5691, 1995 U.S. Dist. LEXIS 2380 (N.D. Ill. 1995)); *Waslewski v. Kato*, No. 92 C 6940, 1993 U.S. Dist. LEXIS 269, at **1, 10-11 (N.D. Ill. 1993); and *Steward v.*

Summerville, No. 90 C 6956, 1992 U.S. Dist. LEXIS 15690, at *2 (N.D. Ill. 1992).

¶ 39 The State argues, and the trial court found, that trial counsel made a strategic decision not to present available evidence that Kato beat and abused other suspects during questioning. But attorneys for both Jeremiah and Elijah sought records from OPS concerning allegations in other cases that Kato and Cirone participated in beating and abusing other suspects. The trial court quashed the defense subpoena for the OPS records. We can see no purpose for the request if counsel made a strategic decision not to use such information. Moreover, the available evidence of Kato's criminal misconduct in other cases appears only to help support, and not to diminish, arguments counsel made for Jeremiah and Elijah. We see no strategic purpose for failing to present the available evidence that Kato and his partners in other cases beat and abused suspects. In light of the availability of such evidence, and the absence of any reason not to present it, we find that Jeremiah and Elijah have shown that their attorneys' work fell below an objective standard of reasonableness.

¶ 40 The State contends that the evidence would not have changed the result of the motion to suppress, because the evidence had no relevance to the allegations of police misconduct here. Parties may introduce evidence that police officers committed acts of brutality in other cases to prove the officers' course of conduct or to impeach the credibility of the officers. *People v. Reyes*, 369 Ill. App. 3d 1, 18 (2006). "Prior allegations of brutality have been found admissible where they involved the same officer or officers as in the defendant's case, where they involved similar methods of abuse, and where they occurred at or near the time of the defendant's allegations." *Reyes*, 369 Ill. App. 3d at 19. Our supreme court adopted a flexible approach regarding proximity in time:

"Even incidents that are remote in time can become relevant,

however, if the party presenting the evidence can present evidence of other incidents that occurred in the interim. Thus, a single incident years removed has little relevance. However, a series of incidents spanning several years can be relevant to establishing a claim of a pattern and practice of torture." *Patterson*, 192 Ill. 2d at 140.

¶ 41 The allegations in the affidavits, the cases cited above, and the Reader article, all involve Kato, who participated in the abuse here. The State points out that Elijah's motion to suppress ascribes most of the beating to Cirone. The Reader article and affidavits from Bey, Gasca and Washington do not mention Cirone. However, all mention Kato and his work with partners who beat suspects. Kato's apparent preference for working with partners who have more physical contact with the suspects does not change the relevance of the evidence, as the allegations in those cases, like the allegations here, involved Kato.

¶ 42 The trial court may admit newspaper articles into evidence at a hearing on a motion to suppress statements. *People v. Johnson*, 2011 IL APP (1st) 092817, ¶ 75. Although the court might not accord most newspaper articles much weight (see *Johnson*, 2011 IL APP (1st) 1092817, ¶ 75), the Reader's article on this issue might carry some special persuasive force, because of the Reader's role in bringing to light the criminal acts of members of the Chicago Police Department in interrogations of other suspects. See *Patterson*, 192 Ill. 2d at 125; *People v. Wrice*, 406 Ill. App. 3d 43, 49-50 (2010).

¶ 43 The State does not deny that the affidavits describe similar beatings and methods of abusing suspects. The many cases listed from the Lexis search, the cases described in the Reader article, and

the affidavits sufficiently support a finding of a pattern or practice of torture, and therefore, under *Patterson*, the time span does not render the evidence irrelevant. Thus, we find that if trial counsel had presented the available evidence of Kato's misconduct to the trial court, the trial court should have considered that evidence for its bearing on the motion to suppress statements.

¶ 44 Next, the State contends that the evidence of beatings and abuse of other suspects would not have changed the court's decision on the motions to suppress statements. We note that we must reverse the dismissal of the postconviction petition if we find a reasonable probability that the evidence would have changed the result of the trial. See *Patterson*, 192 Ill. 2d at 123. The trial court should have granted the motions to suppress if it found that Jeremiah and Elijah did not voluntarily confess to the crime. See *People v. Prim*, 53 Ill. 2d 62, 70 (1972). “Whether a statement was voluntarily given depends upon the totality of the circumstances. The test is whether it was made freely, voluntarily and without compulsion or inducement of any sort or whether the defendant's will was overcome at the time he confessed.” *People v. Howard*, 139 Ill. App. 3d 755, 758 (1985). Our supreme court listed some relevant considerations: “To determine whether the defendant's confession was voluntary, we consider the totality of the circumstances surrounding it, including the defendant's age, intelligence, education, experience, and physical condition at the time of the detention and interrogation; the duration of the interrogation; the presence of *Miranda* warnings; the presence of any physical or mental abuse; and the legality and duration of the detention.” *People v. Nicholas*, 218 Ill. 2d 104, 118 (2005).

¶ 45 Jeremiah was 18 years old and Elijah 17 when they voluntarily appeared at the police station for questioning. Doctors who examined Jeremiah and Elijah found that they suffered from cognitive

disabilities. The impairments could leave them especially vulnerable to coercion. See *People v. Braggs*, 209 Ill. 2d 492, 516-17 (2004). They lacked education. Jeremiah had two juvenile convictions and Elijah had four. Both had asthma and needed inhalers. The trial court believed police testimony that police told Jeremiah and Elijah their rights before questioning them. The interrogations lasted only a few hours overnight. Jeremiah and Elijah do not contest the legality of the detention.

¶ 46 Both Jeremiah and Elijah swore that Kato and Cirone beat them and abused them to obtain confessions. Kato and Cirone denied that they beat and abused Jeremiah and Elijah. The persons who supervised intake of Jeremiah and Elijah into jail said they saw no signs of injuries, but this evidence does not disprove Jeremiah and Elijah's allegations. See *Patterson*, 192 Ill. 2d at 116.

¶ 47 If the trial court heard the available evidence of Kato's beatings and abuse of other suspects, the court should have questioned the reliability of Kato's flat denials of all of Jeremiah and Elijah's allegations. Especially in light of evidence that Kato may have perjured himself in other cases (see, e.g., *McDaniel*, 326 Ill. App. 3d at 781), the court could have accorded greater weight to the testimony of Jeremiah and Elijah, and relied less on Kato's testimony. We find that Jeremiah and Elijah have presented sufficient evidence to show a reasonable probability that if their counsel had submitted to the court available evidence of Kato's acts in other cases, the court would have granted the motions to suppress statements.

¶ 48 Without the statements, the State had only Miller's testimony that she saw Jeremiah and Elijah shoot Blasco. The State argues that it also relied on Cirone's testimony about statements McGee made at the police station, but the State won the direct appeal in this case by arguing that the

court's instructions appropriately limited use of that testimony to impeachment of McGee's testimony in court. Since the trial court did not permit the jury to use Cirone's hearsay testimony as substantive evidence of what McGee saw, we cannot rely on that testimony here as support for the convictions. See *People v. Cruz*, 162 Ill. 2d 314, 359-64 (1994).

¶ 49 McGee's testimony at trial, and her affidavit submitted in support of the postconviction petitions, cast some doubt on Miller's testimony. McGee said that she was alone in the kitchen when the shooting took place, and no other room in the house had a view of the scene of the shooting. Miller did not come to the window until after the shooting stopped and the shooters had left the scene. Miller also misremembered part of the scene and contradicted her prior statements to police. Miller testified that the truck backed into a light pole, but actually it backed into a parked car. Miller told police that she reached into the truck to turn it off, but at trial she swore that another woman, one she could not name, turned off the truck.

¶ 50 Thus, the convictions rely very largely on the handwritten statements of Jeremiah and Elijah. By showing a reasonable probability that a more fully informed court would have suppressed the statements, Jeremiah and Elijah have shown a reasonable probability that they would have achieved more favorable results at their trials if their attorneys had done sufficient research to find, and to present for the hearing on the motion to suppress, readily available evidence that Kato and his partners engaged in a pattern of beating and abusing suspects during interrogations.

¶ 51

CONCLUSION

¶ 52 Jeremiah and Elijah have presented sufficient evidence to support a finding that their attorneys failed to provide reasonable assistance when they did not find and present to the court

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available evidence that Detective Kato and his partners beat and abused suspects during interrogations in a number of cases, and that if their attorneys had presented such evidence, the court would have suppressed their statements. Thus, Jeremiah and Elijah showed a reasonable probability that, but for counsel's errors, they would have achieved a better result at trial. Because Jeremiah and Elijah made a substantial showing of a violation of their constitutional right to counsel (see *People v. Coleman*, 183 Ill. 2d 366, 381 (1998)), we reverse the judgment of the trial court and remand for an evidentiary hearing on the postconviction petitions.

¶ 53 Reversed and remanded.