

FIRST DIVISION
FILED: June 17, 2013

No. 1-11-2362

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF)	Appeal from the
ILLINOIS,)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 92 CR 10385
)	
ALBERT KIRKMAN,)	Honorable
)	Michael Brown,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court was affirmed where its decision to deny the defendant a new trial after a third-stage postconviction evidentiary hearing was not manifestly erroneous.

¶ 2 Following a jury trial in 1994, the defendant, Albert Kirkman, was found guilty of two counts of first degree murder and aggravated battery with a firearm for a shooting that occurred on April 21, 1992, which resulted in the deaths of Cedric Herron and Sammy Walker and serious injuries to Willie Johnson. The defendant was sentenced to natural life imprisonment for the murder convictions and a concurrent term of 30 years' imprisonment for the aggravated battery with a

firearm conviction. On direct appeal, the defendant raised evidentiary errors and alleged ineffective assistance of counsel. This court affirmed the defendant's convictions and his sentence. *People v. Kirkman*, No. 1-94-1219 (Nov. 21, 1995) (unpublished order under Supreme Court Rule 23).

¶ 3 The defendant then filed three *pro se* petitions for postconviction relief pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 1996, 1998, 2004)), claiming in part that counsel failed to call certain alibi witnesses. All three postconviction petitions were summarily dismissed as frivolous and patently without merit by the circuit court, and this court affirmed all three judgments. See *People v. Kirkman*, No. 1-97-0178 (Dec. 31, 1998, *nunc pro tunc* Sept. 30, 1998) (unpublished order under Supreme Court Rule 23); *People v. Kirkman*, No. 1-99-3482 (July 19, 2001) (unpublished order under Supreme Court Rule 23); and *People v. Kirkman*, No. 1-05-1109 (May 31, 2006) (unpublished order under Supreme Court Rule 23). On December 19, 2006, the defendant filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2006)), which the circuit court denied.

¶ 4 On December 21, 2009, with the assistance of counsel, the defendant filed a successive postconviction petition based on actual innocence. The defendant claimed he was entitled to a new trial because Johnson recanted his original trial testimony in which he identified the defendant and his co-defendant, Cedric Cal, as the shooters. In Johnson's affidavit, he identified Keith Ford and another unidentified man as the shooters. Without objection from the State, the circuit court advanced the defendant's petition to the third stage of postconviction proceedings and conducted an evidentiary hearing on various dates in 2011. On July 15, 2011, the circuit court denied the defendant's petition, concluding that Johnson's recantation was not credible and that a new trial was

not warranted. The defendant timely appealed. We affirm.

¶ 5 The defendant and Cal were tried together, and the circuit court conducted one evidentiary hearing for both his and Cal's petitions for postconviction relief. This court recently summarized the facts adduced at those proceedings in Cal's appeal, and we hereby incorporate those facts:

"At trial, Johnson testified that on April 21, 1992, he got into a fight with five men, including the defendant and Kirkman, at the home of Keith Ford, after Ford directed the men to attack him. Johnson testified that the fight concerned a matter involving his sister, Latanya Johnson. Johnson's two friends, Cedric Herron and Sammy Walker, arrived at the scene and helped him fight off the individuals attacking him. Johnson testified that later that night, he was talking to Herron and Walker outside of his home when two men approached and shot at them. While lying on the ground, Johnson looked back and saw the 'gun firing and then again [he saw] faces.' He said that he saw Kirkman's face and the other young man's face. He also testified that he identified Kirkman and the defendant for the police.

On cross-examination, Johnson denied that the fight involved Herron's drug sales on Ford's 'turf.' He denied seeing the police speak to his girlfriend, Latrese Buford, or his sister, Latanya, at the hospital.

Latrese Buford testified for the defendant. Buford testified that on April 21, 1992, she was with Johnson when she witnessed an altercation between Herron and Ford over a drug sale. Buford testified that Ford was driving one of two Astro vans that arrived with several people who began fighting one of Herron's dealers. She testified that Johnson pointed to some of the men in the fight and mentioned Kirkman's name. Buford testified

that, after the fight, Ford approached Johnson, informing him that it could be dangerous being around Herron because Herron was selling drugs on Ford's turf. Buford and Johnson then went to Johnson's home. Buford testified that sometime after 10 p.m., Herron and Walker arrived at Johnson's home, and Johnson stepped outside to talk with them. Buford was inside the home when she heard gunshots.

Upon this evidence, the jury found the defendant guilty of murder and aggravated battery with a firearm.

At the defendant's postconviction evidentiary hearing, Johnson denied ever fighting with Kirkman or the defendant, but he admitted that, on one occasion that April, he walked up to Kirkman and stole his drugs. On cross-examination, Johnson testified that Kirkman allowed him to steal his drugs and did not try to stop him. Johnson admitted that he spoke to Assistant State's Attorney Darren O'Brien and an investigator, Joanne Ryan, in April 2010. However, he denied that he told them that he slammed Kirkman to the ground when he stole the drugs. He also denied that he told them that the defendant was present during the theft. Johnson testified that he could not recall whether the defendant was present at the time he stole Kirkman's drugs. Johnson denied having any other disputes with the defendant or Kirkman, including any dispute involving his sister.

Johnson testified that on the night of the shooting, he was outside talking with Herron and Walker when two men with guns arrived. When asked whether both men were shooting at him, Johnson testified that, while laying on the ground, he saw one man shoot and heard one gun; he explained that he was not able to turn around all the way because he was playing

dead. He identified Ford as one of the shooters and recognized the other man, but he did not know that man's name; however, he testified that he knew the man was neither Kirkman nor the defendant.

Johnson testified that he falsely identified the defendant and Kirkman as the shooters because he was afraid of Ford and because his family had received threatening calls, which he believed came from Ford. Johnson stated that he never gave the police Ford's name because he 'feared to even use his name' and wanted to 'take care of it in the streets.' When the police returned with the photo lineup, Johnson explained that he again identified the defendant and Kirkman because Ford was 'adamant about what he would do to [his] people if [he] implicated [Ford] in any way, type of way, shape, form or fashion.' On cross-examination, he denied telling ASA O'Brien and Investigator Ryan that he could not say for sure whether the second shooter was Kirkman or the defendant. Johnson denied telling ASA O'Brien and Ryan that he never provided the defense investigator with a statement that he knew the second shooter was neither the defendant nor Kirkman. He also admitted that he did not come forward in the 17 years since the defendant's trial, until he was contacted by the defendant's lawyers in 2009.

On further cross-examination, Johnson admitted that he and Herron argued with Ford on the day of the shooting, but he denied that a physical fight ensued. He testified that he did not recall whether Kirkman or the defendant were present during the altercation. He denied telling ASA O'Brien and Investigator Ryan that a physical fight occurred, but he admitted telling them that Kirkman and the defendant were both on Ford's side during the argument.

Johnson explained that he heard Latanya and Buford tell the police at the hospital that the defendant and Kirkman were the shooters, so he agreed with them. He explained that 'when [his] sister and [Buford] pointed these guys out[,] it was just convenient,' because he felt like he was protecting his family. He admitted it was wrong, but he feared for his family. Johnson testified that, during the defendant's trial, he avoided court dates and tried to avoid testifying but eventually testified against the defendant after prosecutors threatened him with parole violation charges. Johnson stated that, while he believed that Kirkman and the defendant were aligned with Ford, he feared only Ford and did not fear Kirkman or the defendant.

The court then questioned Johnson about a few matters. Regarding when he heard Latanya and Buford provide police with the defendant's name, Johnson testified that he heard this while he was still on the floor of his mother's home after the shooting. Regarding the threatening phone calls, Johnson testified that his mother and sister told him they had already received calls while he was in the emergency room. Johnson then testified that he received a call while in the emergency room from someone in the penitentiary named 'Bo Dilly.' Regarding why Johnson was no longer afraid of Ford, Johnson testified that he spoke to Ray Longstreet, who told him that he had nothing to worry about and to '[j]ust get up there and do the right thing.' He understood Longstreet to be advising him to tell the truth and that he would be protected if he did so. Johnson's conversation with Longstreet lasted "probably not even a minute." Johnson testified that Longstreet was a high-ranking member of the Vice Lords; and that he, Kirkman and the defendant were also members of the Vice Lords,

although he claimed that he was 'retired' from the organization. After speaking to Longstreet, Johnson signed an affidavit that defense counsel had prepared. Johnson also testified that he felt safer coming forward now that he lived in Texas.

At the postconviction hearing, Buford testified that, on the night of the shooting, she did not see any shooters, but she saw a slow-moving grayish or blueish Astro van driving slowly out of the alley between Harding and Pulaski and heading toward Chicago Avenue. Buford saw two or three people in the van, but she did not see their faces and did not see a license plate.

Buford recalled that, while they were in the emergency room, Johnson told her that the defendant and Kirkman were the shooters. She testified that she gave police this information when the detectives took her home from the hospital. However, Buford denied telling the police that Kirkman or the defendant were the shooters while Johnson was in the emergency room. She also denied hearing Latanya provide that information to the police while in the emergency room. Buford testified that she first heard the names mentioned when Johnson mentioned them in the emergency room. Buford claimed that she did not see Johnson make or receive any phone calls in the emergency room and testified that there were no phones present in the emergency room.

State's Attorney Investigator Joanne Ryan testified that on April 6, 2010, she interviewed Johnson in Monroe, Louisiana. Johnson told her that on the day of the shooting, he slammed Kirkman to the ground and stole his drugs. Johnson stated that the defendant was present during that incident. Johnson further told her that later that day, there was a

physical altercation between Ford's gang and other drug dealers doing business nearby. Johnson told Ryan that Ford was one of the shooters, but that he did not get a good look at the second shooter. He admitted to Ryan that he could not identify the second shooter and could not exclude Kirkman or the defendant as the possible second shooter. Johnson also stated to her that he never told the defense investigator that he was certain that the second shooter was neither the defendant nor Kirkman." *People v. Cal*, 2013 IL App (1st) 112354-U, ¶¶ 5-17).

¶ 6 On July 15, 2011, the circuit court denied the defendant's petition, finding that Johnson's recantation lacked credibility. The court found that in his new testimony, Johnson gave conflicting accounts of when he heard two witnesses, Latanya Johnson and Latrese Buford, identify the defendant to the police; and how many shooters there were. The court further noted that Johnson testified that he and his family members were receiving calls in the emergency room, which Buford testified had no phone. The court also found Johnson's identification of the shooters at the hospital to be more credible than his explanation that he falsely identified the defendant so that he could handle Ford on the street. Further, the circuit court determined that Johnson came forward for no reason other than his loyalty to the Vice Lords. Additionally, the court found that Johnson seemed more concerned about satisfying a gang acquaintance, Ray Longstreet, than he was about justice and that he did not seem concerned about the criminal penalties associated with perjury. In conclusion, the circuit court found that the "number of shooters, number of cartridges found at the scene, the testimony concerning the placement of the shooters, all convinced [him] that the other evidence in this case [was] consistent with [Johnson's] testimony" at trial. The court determined that Johnson's

recantation was not credible and "[b]ecause it [was] not credible, it [was] not material." The court therefore denied the defendant's petition. The defendant timely appealed.

¶ 7 On appeal, the defendant argues that the circuit court erred in denying his postconviction petition and that his conviction deprives him of due process under the United States Constitution. The defendant begins his attack on the circuit court's judgment by arguing that the court erred in limiting the scope of Buford's testimony by not allowing her to testify that: (1) Johnson apologized to her for falsely implicating the defendant in the shooting; (2) the defendant and Cal were known in the neighborhood as "neutral" parties, whereas Ford was a feared gang leader; and (3) Ford owned an Astro van similar to the one she saw leaving the scene of the shooting. We disagree that the circuit court's exclusion of this testimony constitutes reversible error.

¶ 8 The circuit court has wide discretion to limit the type of evidence it will admit at a postconviction evidentiary hearing. *People v. Morgan*, 212 Ill. 2d 148, 162, 817 N.E.2d 524 (2004). Regarding the purported apology, the defendant contests the circuit court's reasoning that the apology was an inadmissible prior consistent statement. However, even if we were to accept the defendant's argument on this point, we would conclude that any error in excluding Buford's testimony regarding the apology was harmless, because it was cumulative of Johnson's testimony in which he acknowledged that falsely identifying the defendant was wrong and that he did so only out of fear for his family. *People v. Demeron*, 153 Ill. App. 3d 440, 446, 505 N.E.2d 1222 (1987).

¶ 9 Regarding Buford's testimony about the reputations of the defendant and Ford, we agree with the circuit court that whether the defendant was a "neutral" party in the neighborhood was not relevant to determining the credibility of Johnson's recantation. Further, even if the circuit court

erred in excluding this testimony, the error was harmless where Johnson had already testified that he was not afraid of the defendant but was afraid of Ford. Therefore, exclusion of Buford's testimony regarding the defendant's status as a "neutral" party did not prejudice his case.

¶ 10 Finally, regarding Buford's testimony that she knew Ford drove an Astro van similar to the one she saw on the night of the shooting, we agree with the circuit court that the proffered testimony was speculative as to whether the van actually belonged to Ford, because Buford could not identify the occupants of the van and did not see the license plates of the van. Further, the fact that Ford was known to drive an Astro van was already in evidence, as Buford testified at the defendant's trial that she saw Ford driving an Astro van to the scene of the altercation between Ford and Herron. Therefore, if the court erred in excluding Buford's testimony that Ford drove a similar van, that error was harmless.

¶ 11 Next, we address the defendant's argument that the circuit court's denial of his postconviction petition was manifestly erroneous. Our courts have recognized the right of postconviction petitioners to assert a claim of actual innocence based on newly discovered evidence. *Morgan*, 212 Ill. 2d at 154. To win relief under that theory, the evidence adduced by the defendant must first be "newly discovered," "material and noncumulative," and of such conclusive character that it would probably change the result on retrial. *Id.* Recanted testimony is generally "regarded as inherently unreliable," and "courts will not grant a new trial on that basis except in extraordinary circumstances." *Morgan*, 212 Ill. 2d at 155. Further, it is "for the trial court to assess the credibility of the recantation testimony after having observed the demeanor of the witness." *Morgan*, 212 Ill. 2d at 165. Where the circuit court has held an evidentiary hearing at which it considered the new evidence and weighed

the credibility of the witnesses, we will disturb the circuit court's judgment only if it is manifestly erroneous. *Morgan*, 212 Ill. 2d at 155. "Manifest error is error which is 'clearly evident, plain, and indisputable.' " *Id.*, (quoting *People v. Johnson*, 206 Ill. 2d 348, 357-60, 794 N.E.2d 294, quoting *People v. Ruiz*, 177 Ill. 2d 368, 384-85, 686 N.E.2d 574 (1997)).

¶ 12 Here, the defendant argues that the circuit court erred in two ways when it concluded that Johnson's recantation was not credible: (1) the court erroneously considered six factors, taken from various cases, in assessing the recantation; and (2) the court incorrectly assessed Johnson's credibility using a subjective point of view instead of an objective one. We disagree.

¶ 13 We first reject the defendant's argument that the circuit court erred in considering six factors when it assessed the credibility of Johnson's recantation. The six factors are: (1) the recantation's internal consistency and inherent plausibility (*People v. Ortiz*, 235 Ill. 2d 319, 336-37, 919 N.E.2d 941 (2009); *Morgan*, 212 Ill. 2d at 159-61; and *People v. Burrows*, 172 Ill. 2d 169, 188-91, 665 N.E.2d 1319 (1996)); (2) the plausibility of the recanter's motive for perjuring himself at trial (*Morgan*, 212 Ill. 2d at 159-60); (3) the plausibility of the recanter's motive for stepping forward now (*Id.* at 159-61); (4) whether the recantation is against his interest (*Id.* at 162-63); (5) the importance of the recanted testimony to the original guilty verdict (*Ortiz*, 235 Ill. 2d at 336-37; *People v. Washington*, 171 Ill. 2d 475, 498, 665 N.E.2d 1330 (1996)); and (6) whether other evidence supports or contradicts the recantation (*Ortiz*, 235 Ill. 2d at 336-37; *Morgan*, 212 Ill. 2d at 163; *Burrows*, 172 Ill. 2d at 182-191). The State argues that the defendant cannot complain that the circuit court erred in considering these factors when defense counsel urged the court to use them during the evidentiary hearing. We agree with the State that, even if the court erred in considering these six factors, the

defendant invited the error. *People v. Harding*, 2012 IL App (2d) 101011, ¶ 17. However, the circuit court did not err in considering the factors, because Illinois courts have considered them when assessing the credibility of a recantation. See *Ortiz*, 235 Ill. 2d at 336-37; *Morgan*, 212 Ill. 2d at 159-63.

¶ 14 The defendant further argues that the circuit court erred in considering these six factors instead of focusing on the three requirements for new evidence to warrant a new trial, namely that the evidence be: (1) newly discovered; (2) material and noncumulative; and (3) of such a conclusive character that it would probably change the result on retrial. *Morgan*, 212 Ill. 2d at 154. However, in our view, the circuit court did not overlook these three requirements by analyzing the six credibility factors. Rather, the circuit court used the six factors, along with its observation of Johnson's demeanor, to determine whether Johnson's recantation was credible. Having determined that the recantation lacked credibility, the court concluded that the new evidence was not material and would probably not change the result on retrial. Thus, the court correctly used the six factors to inform its determination as to whether the new evidence met the requirements to warrant a new trial.

¶ 15 Under the defendant's theory, the circuit court should not have considered whether Johnson's recantation was credible; rather, the court should have simply accepted the recantation and determined that, if presented to a jury, it would have probably changed the outcome on retrial. However, by the defendant's own admission in his brief, it is undisputed that postconviction courts must make credibility determinations during evidentiary hearings. In fact, as the State points out, a postconviction court's determination of the credibility of new evidence is a tool that assists it in

determining whether the evidence is of such conclusive character that it would probably change the result on retrial. See *Schlup v. Delo*, 513 U.S. 298, 329-330 (1995) (noting, in context of a *habeas corpus* proceeding, that newly presented evidence may call into question the credibility of the witnesses and, in such cases, the court may have to make credibility assessments; and contrasting with the review performed in sufficiency-of-the-evidence cases, in which the credibility of witnesses is generally beyond the scope of review). Thus, we reject the defendant's contention that the circuit court erred in considering the six factors when it determined that Johnson's recantation did not warrant a new trial.

¶ 16 Next, we reject the defendant's contention that the circuit court improperly considered whether it subjectively believed Johnson's recantation instead of determining whether a reasonable juror would have found the evidence credible. The defendant relies particularly on the circuit court's comment that it had to determine whether or not it "believe[d]" Johnson's recantation in support of his contention that the court used a subjective standard. However, the defendant takes the court's comment out of context. The circuit court's comment was made in the course of a discussion regarding the court's duty to make credibility determinations in deciding whether the new evidence was material and could likely affect the outcome if a new trial was granted. Here, after objectively considering various factors and observing the witnesses, the circuit court concluded that Johnson's recantation was not credible and would therefore probably not lead a reasonable jury to change the outcome on retrial. Thus, reading the record in its entirety, we reject the defendant's argument that the circuit court used an improper legal standard in ruling on the defendant's postconviction petition.

¶ 17 Finally, we reject the defendant's argument that the circuit court manifestly erred in denying

him a new trial on the basis that Johnson's recantation was not credible. The circuit court concluded that Johnson's recantation was not credible because: (1) Johnson's recantation was internally inconsistent and implausible; (2) Johnson had no motivation to lie at trial; and (3) Johnson recanted out of allegiance to the Vice Lords and not out of reasons related to justice. We agree with all three conclusions.

¶ 18 First, Johnson's recantation contained internal inconsistencies and implausible explanations. For instance, Johnson testified that he was terrified of Ford but falsely accused the defendant and Cal because he wanted to take care of Ford "on the streets." Johnson also testified at the evidentiary hearing that he heard Latanya and Buford provide police with the defendant's name at the hospital and that he just "rolled with it." Later in his testimony, he said that they gave the police this information while he was still in his living room, waiting for the paramedics. Buford denied giving police the information at the hospital. In his affidavit and at the hearing, Johnson identified Ford as one shooter and averred that he knew that the other shooter was neither Cal nor the defendant but did not know the second shooter's identity. However, Investigator Ryan testified that Johnson told her he could not say for sure that the second shooter was not Cal or the defendant and that he denied providing the defense with the statement indicating he knew the second shooter was not the defendant or Cal. Further, Johnson testified that his mother and sister were receiving threatening calls in the emergency room and that he received a call while in the emergency room. Yet, Buford testified that she did not see Johnson make or receive phone calls in the emergency room and that there was no phone in the emergency room. We agree with the defendant that the circuit court misconstrued Johnson's testimony as to the number of shooters. Johnson never changed his story

that two men were shooting. He stated only that he saw one man shooting directly at him while lying on the ground because he could not turn all the way around. However, on the overall record, we conclude that the circuit court did not err in its ultimate finding that Johnson's recantation contained internal inconsistencies and implausible explanations.

¶ 19 Next, we conclude that the circuit court did not err in determining that Johnson's original identification was more believable than his recantation. Johnson testified at the evidentiary hearing that, while in the emergency room, he thought that he was dying. Yet, he testified that he falsely identified the defendant and Cal because he was afraid of Ford, wanted to deal with Ford on the streets, and wanted to protect his family from Ford's threats. Based on this evidence, we agree with the circuit court that the circumstances surrounding Johnson's initial identification make it more believable than his rather implausible recantation.

¶ 20 Finally, we conclude that the circuit court did not err in determining that Johnson's recantation was motivated by gang allegiance. Johnson testified that he came forward after a less-than-one-minute phone call with Longstreet, a high-ranking Vice Lord, who promised Johnson that he would be protected if he came forward. The circuit court's conclusion was not unfounded given Johnson's testimony and the fact that he, the defendant, Cal and Longstreet were all members of the Vice Lord gang family and Ford was a member of a rival gang. The defendant argues that Johnson testified that he came forward only because he was no longer afraid of Ford, and he argues that this testimony was unrebutted. The defendant argues, therefore, that the circuit court erred in disregarding Johnson's unrebutted testimony. See *Bucktown Partners v. Johnson*, 119 Ill. App. 3d 346, 351-52, 456 N.E.2d 703 (1983) (stating that the fact-finder may not arbitrarily disregard

unrebutted testimony). We disagree with the defendant's assertion that the circuit court disregarded Johnson's testimony. Rather, the court came to its conclusion that the testimony was not credible in light of the entirety of Johnson's testimony and the evidence in the case. *People v. Dopson*, 2011 IL App (4th) 100014, ¶ 19, 958 N.E.2d 367 (during postconviction evidentiary hearing, it is the duty of the circuit court to determine the witnesses' credibility, decide the weight to be given their testimony, and resolve any conflicts in the evidence).

¶21 On that point, the defendant further argues that the circuit court's conclusion that Johnson did not fear a penalty for perjury and recanted only out of an interest in serving the Vice Lords was unsupported by the evidence. He argues that there was no evidence rebutting Johnson's testimony that he retired from the Vice Lords and no evidence that Longstreet or the Vice Lords had pressured him to recant. Further, the defendant points out that the State concedes that it charged Johnson with perjury following the hearing. The circuit court, however, inferred that Johnson was acting in the interest of the Vice Lords and did not fear any penalty for perjury; it did not conclude that Longstreet pressured Johnson or that he was never at risk for perjury charges. The circuit court had a basis for its inference given Johnson's testimony; it was also in the best position to observe the demeanor of the witnesses. *People v. Gonzalez*, 407 Ill. App. 3d 1026, 1035, 944 N.E.2d 834 (2011) (credibility determinations are properly made by the trier of fact). Under these facts, we cannot find that the circuit court manifestly erred in finding Johnson's recantation lacked credibility.

¶22 Additionally, the defendant argues that the importance of the recanted testimony in this case warrants a new trial because without Johnson's identification, the State could never have prosecuted him. However, the law is established that the circuit court may make credibility determinations

during a third-stage postconviction evidentiary hearing. The defendant cites to no authority, and we have not found any, which eliminates the circuit court's duty to make credibility determinations and requires it to grant a new trial where a defendant has been convicted solely on the testimony of a recanting witness. See *Morgan*, 212 Ill. 2d at 165 ("In the end, defendant's postconviction petition turned on a single factor: the credibility of [the recanting witness]"); *People v. English*, 406 Ill. App. 3d 943, 954, 943 N.E.2d 689 (2010) (after a third-stage postconviction evidentiary hearing, appellate court found that the trial court did not manifestly err in deeming that the recanting identification witness and the new witness were not credible and in denying the defendant a new trial).

¶ 23 Finally, the defendant argues that, even if this court finds that he was not entitled to a new trial following the postconviction evidentiary hearing, we must reverse his conviction because it is based upon the possibility that Johnson lied at trial and thereby violates his right to due process. U.S. Const. amend. XIV. The defendant's argument is premised on the assumption that Johnson's original trial testimony was perjured and his recantation is honest. The circuit court rejected that assumption, and we have determined that its conclusion was not manifestly erroneous. Therefore, the defendant's additional due process argument cannot be sustained. See *Morgan*, 212 Ill. 2d at 165 (similarly rejecting the defendant's due process argument where the court affirmed the lower courts' determination that the recanted testimony was not credible and a new trial was not warranted).

¶ 24 Based on the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.