2018 IL App (1st) 150886-U

THIRD DIVISION
June 6, 2018

No. 1-15-0886

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County
	)	
v.	)	Nos. 99 CR 8692 (02),
	)	99 CR 8693 (02)
MICHAEL SANDERS,	)	
	)	The Honorable
Petitioner-Appellant.	)	Lawrence E. Flood,
	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* On petitioner's consolidated petitions for postconviction relief alleging actual innocence based on witness's recantation of prior testimony and statements implicating petitioner in two murders, trial court's order denying postconviction relief following a third-stage evidentiary hearing was not manifestly erroneous.

¶ 2 Petitioner Michael Sanders was convicted of first degree murder in two separate cases: (1) Case No. 99 CR 8692, involving victim Keary Lee Gagnier, for which he was sentenced to natural life in prison ("Gagnier case"); and (2) Case No. 99 CR 8693, involving victim Merceda

Ares, for which he was sentenced to 60 years in prison ("Ares case"). In both cases, he was convicted under an accountability theory for the acts of Ronald Hinton, who pled guilty to both murders and was sentenced to natural life in prison. This court affirmed both of petitioner's convictions on direct appeal. *People v. Sanders*, 372 Ill. App. 3d 1098 (2007) (unpublished order under Supreme Court Rule 23), *petition for leave to appeal denied*, 225 Ill. 2d 667 (2007); *People v. Sanders*, 378 Ill. App. 3d 1140 (2008) (unpublished order under Supreme Court Rule 23), *petition for leave to appeal denied*, 228 Ill. 2d 549 (2008).

¶ 3 In both cases petitioner filed petitions for postconviction relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2014)), alleging actual innocence. Both petitions were supported by affidavits from Hinton, in which Hinton recanted his previous testimony and statements that implicated petitioner in the murders. The trial court advanced the petitions to a third-stage evidentiary hearing, at which it heard testimony from Hinton, petitioner, and others. The trial court denied the petitions, finding that petitioner failed to show a substantial deprivation of his constitutional rights and failed to prove actual innocence. Petitioner now appeals, contending the trial court's ruling was manifestly erroneous. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On March 11, 1999, petitioner and Hinton were arrested after surveillance video showed them using an ATM card that had belonged to Ares on the day after her murder. They were taken into custody and interrogated by Chicago Police Department Detectives Edward Louis and Nick Rossi. Ultimately, both men gave court-reported statements to Assistant Cook County State's Attorney Michael Falagario ("ASA Falagario"). Both men gave consistent statements, in which they confessed they had burglarized the apartments of both Ares and Gagnier, and petitioner was present while Hinton raped and murdered both victims.

¶ 6 A. Statements by petitioner and Hinton in the Gagnier case

¶ 7 Hinton gave his court-reported statement concerning the Gagnier case on March 12, 1999, and petitioner gave his statement on March 13, 1999. Both statements began with the men being explained their *Miranda* rights and indicating they understood. Both men then gave statements consistent with the following facts.

¶ 8 On the evening of August 19, 1998, petitioner and Hinton were on the back porch of an apartment building, drinking "St. Ides" malt liquor and wine. Someone came to the back door of the apartment on the first floor, so they went to the third floor, where they noticed the back door to the apartment was open. The screen door was closed and latched, but they saw that the screen contained a slit through which someone could reach in and unlatch the hook. Hinton did so and opened the screen door. The men then walked into the kitchen of the apartment. Both said they saw a purse and realized a woman was in the apartment. Both described her as wearing shorts and a t-shirt or tank-top that was white or "off-white" in color. Hinton grabbed the woman in a headlock or choke-hold from behind and took her into the bedroom. Hinton said that he laid the woman on the bed, removed her shorts and underwear, and had sex with her.

¶ 9 Petitioner explained that at that point, he took the purse outside to look through it. He found $60 cash and four credit cards inside. He threw the purse in a trash can in the alley behind the building and then went back into the apartment to burglarize it further. Petitioner explained that when he went back inside, he saw Hinton in the bedroom having sex with the woman, who was struggling to get out from underneath him. Both men confirmed that, as she was struggling, Hinton was choking her with both his hands around her neck. Petitioner said he saw Hinton choking the woman for about three minutes until she passed out, at which point he left the bedroom to look for things to steal. Hinton's testimony was similar, adding that he flipped her

over, put her in a choke-hold until she stopped breathing, and then flipped her over again. Hinton confirmed that petitioner had come into the bedroom at some point during the struggle and told him that he had found $60 and some credit cards in the purse. Among the items they took from the apartment were a camera, some movies and CDs, and "costume jewelry." They took these items out of the apartment in a bag and a pillowcase. They left the victim lying face-up on the bed with blood coming out her nose. Hinton said that as they left, petitioner showed him the trash can in the alley where he had thrown away the purse.

¶ 10 At the end of their respective statements, both men identified what was shown in certain photographs taken of the crime scene. Both men stated that they had been treated well by the police, given food, and allowed to use the restroom and sleep when they needed to. Both men confirmed that nobody had made them any promises while at the police station.

¶ 11 B. Statements by petitioner and Hinton in the Ares case

¶ 12 Hinton gave his court-reported statement concerning the Ares case on March 12, 1999, and petitioner gave his statement on March 13, 1999. Both statements again began with the men being explained their *Miranda* rights and indicating they understood. Both men gave statements that were fully consistent with the following facts.

¶ 13 On February 13, 1999, at about 9:00 a.m., the two of them and their friend David Wales were together looking for a house to burglarize. Their plan was to knock on doors and break in if nobody was home. At the first house where they knocked, somebody answered, so they asked for a person who they knew would not be there and left. They next knocked on the door of an apartment on the second floor of an apartment building, and nobody answered. A transom window with a screen was above the door. Hinton climbed on a chair, took the screen off the window, and tried to climb through it. Hinton did not fit through the window, but petitioner, who

was slimmer than Hinton, tried and was able to get inside. Petitioner then opened the door for the other two, and the three men entered into the kitchen. At that point, a woman in her early 30s confronted them, and Hinton grabbed a small knife he found in the kitchen. Hinton told petitioner to take the woman into the bedroom, which petitioner did. Hinton then came into the bedroom, climbed on top of the woman, and had sex with her. Both men said the woman mentioned being a "social worker."

¶ 14 Petitioner said that at that point, he left the bedroom and began looking for items to steal. Both men stated that at some point an ATM card was found, although their statements diverged slightly. Petitioner said he found the card and asked the woman for her PIN number. He said that at first she would not divulge her PIN number, so Hinton held the knife to her throat and she told them. Hinton stated it was Wales who found the card and asked for the PIN number, and the woman told him. Wales then said to Hinton that she was probably lying, so Hinton asked her again and she told him the number also.

¶ 15 Petitioner and Hinton again told consistent stories about how Ares was murdered. They both stated that, after she divulged her PIN number, they were concerned she could identify them. Hinton began choking the woman with both hands. The woman was screaming, so Hinton asked petitioner for help. Petitioner put a pillow over the woman's mouth to lower her screams while Hinton continued choking her. He choked her for about four or five minutes, and she stopped moving. They left her lying face-up on the bed. They gathered the items to take, including some jewelry and a camera, and left the apartment. Hinton and petitioner left by the front door and Wales left by the back door because, as both explained, that would look less "suspicious" than if they all left by the same door. Petitioner also explained that he had worn socks over his hands during the burglary to avoid leaving fingerprints, and petitioner and Hinton

both mentioned that petitioner threw the socks in the bushes as they were leaving. They went to an ATM machine to see if they could use the card they had stolen, which they were able to do. Petitioner said they withdrew $250, while Hinton said it was either $250 or $500, but both men stated they split whatever money they had obtained. Both said they continued using the card several more times, and they were able to withdraw a total of about $1,500 or slightly more.

¶ 16 Again, at the end of their respective statements, both men identified what was shown in certain photographs taken of the crime scene. Both men stated that they had been treated well by the police, given food, and allowed to use the restroom and sleep when they needed to. Both men confirmed that nobody had made them any promises.

¶ 17 C. Pretrial motions

¶ 18 Initially both men were charged together in both cases, although their cases were ultimately severed. Both petitioner and Hinton filed motions to suppress their respective statements on the basis that they were unlawfully obtained through physical and mental coercion by the police. In petitioner's motion, he alleged that he had initially denied to Detectives Louis and Rossi that he had any involvement in either murder. He alleged that when he did so, the detectives slapped him five or six times and punched him in the face and told him to stop lying. He alleged they brought Hinton into the interview room and Hinton made accusations against petitioner. He alleged that Lieutenant Nick Nickeas told him that if he cooperated in the Ares case, he would be "charged with burglary, do a couple of years, and move on with [his] life." He alleged that he ultimately made incriminating statements in response to scenarios involving the two homicides that Detectives Louis and Rossi made him repeat. And he alleged that the detectives made him rehearse their versions of the events numerous times to "get it right" before giving the statements to ASA Falagario. A hearing was held on petitioner's motion, at which

Detectives Louis and Rossi and Lieutenant Nickeas testified and denied the allegations. Petitioner did not testify. Petitioner's motion was denied.

¶ 19 In Hinton's motion to suppress his statements, he alleged during the interrogation that Detective Louis had put him in a choke-hold while telling him that was how the victims felt, that Detective Rossi had grabbed him by the testicles and told him he was going to tell the police what they wanted to know, that he had been struck in the ribs with a billy club, and that he had been denied food, drink, sleep, and use of the restroom facilities. That motion was also denied.

¶ 20 Petitioner later moved to reopen the suppression hearing based on additional evidence that, he alleged, called into question the voluntariness of his statement. His motion relied in part upon the fact that no pillows had been inventoried by the police from Ares' apartment and, according to the motion, no photographs of the crime scene showed any pillows. Petitioner argued this called into question his statement that he held a pillow over Ares' mouth while Hinton choked her. The trial court denied petitioner's motion to reopen the hearing.

¶ 21 On October 8, 2003, petitioner filed a motion to take Hinton's discovery deposition. He attached to his motion a document that was not notarized but that purported to be an affidavit signed by Hinton and dated August 11, 2003. The affidavit was short, but in it Hinton stated that if given the opportunity to testify, he would testify that petitioner "had nothing to do with the crimes he is charged with presently." Rather, Hinton stated he would testify that he (Hinton) was "solely responsible for the crimes" that he and petitioner were charged with. Hinton stated that he thought petitioner "should be fully exonerated of all the charges that he is now faced with." On November 12, 2003, the trial court held a hearing on petitioner's motion to depose Hinton. At that hearing, Hinton's attorney appeared and asserted Hinton's right under the fifth amendment not to testify. The trial court accepted Hinton's attorney's representation and denied petitioner's

motion.

¶ 22 D. Trial and direct appeal in the Ares case

¶ 23 On May 11, 2004, Hinton pled guilty to the murders of both Ares and Gagnier. Petitioner proceeded to jury trial on charges of first degree murder in the Ares case, which began May 14, 2004. In this court's order on direct appeal, we fully set forth the evidence from that trial. We restate here only the evidence necessary to an understanding of the issues pertinent to this appeal.

¶ 24 Neither petitioner nor Hinton testified at the trial. Detective Louis testified that he and Detective Rossi interviewed petitioner several times on the night of his arrest, March 11, 1999. He testified that, although he did not have petitioner sign a *Miranda* waiver form, petitioner was given his *Miranda* rights before each interview and seemed to understand them. He testified that at first, petitioner told them that he found the ATM card and attempted to use it. Detective Louis explained that over the course of the night, Hinton, whom the detectives were interviewing separately, began cooperating with them, and they told petitioner about this. After this occurred, petitioner admitted being involved in a burglary in which a woman was killed. Detective Louis explained that in an interview late on March 12, 1999, petitioner finally gave him a detailed explanation of the facts surrounding the murder of Ares. Detective Louis testified to what petitioner had told him during this interview, which was consistent with petitioner's court-reported statement as set forth above.

¶ 25 ASA Falagario also testified that shortly after midnight on March 13, 1999, he spoke with petitioner about the murder for about 45 minutes, before ultimately taking a court-reported statement from him. ASA Falagario testified that, before taking the statement from him, he and petitioner were alone without any police officers present. ASA Falagario testified he asked petitioner at that time how he was being treated by the police. He stated petitioner told him there

were no problems and he was being treated fine. He stated that petitioner told him that no police officers made any threats to him at any time, nor did they make any promises to him about this case. ASA Falagario stated he eventually took a court-reported statement from petitioner, for which Detective Louis was also present. ASA Falagario testified as to what petitioner said in that court-reported statement, which was again consistent with what is set forth above.

¶ 26 Sergeant Lawrence Aikin testified that he had investigated the Ares murder as a homicide detective, and he identified photographs taken of the crime scene. He confirmed one of the photographs depicted a pillow on the floor, which he had seen at the apartment. On cross-examination, he testified that no pillows were shown in other photographs and he did not inventory any pillows. Officer William Moore also testified that was a forensic investigator involved in the investigation of the Ares murder, and he testified he had seen a pillow on the floor of Ares' bedroom. Molly Kelly, one of Ares' neighbors, testified that on the night of the murder, she returned home and saw two plastic chairs from her porch had been moved in front of the back door to Ares' apartment. She testified that the screen door opened outward, meaning that with the plastic chairs in front of the door, the screen door could not have opened.

¶ 27 After hearing all the evidence, the jury found petitioner guilty of first degree murder, and he was sentenced to 60 years in prison. Petitioner filed a direct appeal. Among the issues he raised on appeal was the trial court's denial of his motion to suppress his statement on the basis that it was a result of physical and mental coercion by the police, and the denial of his motion to reopen the hearing on his motion to suppress. This court affirmed petitioner's conviction.

¶ 28 E. Trial in the Gagnier case

¶ 29 On October 18, 2004, petitioner proceeded to a jury trial on first degree murder charges in the Gagnier case. Again the evidence adduced at this trial was fully set forth in this court's

order on direct appeal, and we restate here only that evidence necessary to an understanding of the issues pertinent to this appeal.

¶ 30 At this trial, Hinton testified. In all material respects, Hinton's testimony was consistent with what he said in his court-reported statement taken March 12, 1999, as set forth above. Hinton also testified about the incident in which he and petitioner were seen on video using the ATM card on February 14, 1999, which ultimately led to his arrest.

¶ 31 Detective Louis also testified to his interrogation of petitioner in March 1999 concerning the murder of Gagnier. He testified that the interrogation began as he and detective Rossi were questioning petitioner about an "unrelated incident" involving an ATM card. Detective Louis testified that, as they were interrogating Hinton and petitioner separately, Hinton eventually began cooperating with the detectives and told them also about the burglary and murder of Gagnier. Thus, he explained, the detectives brought Hinton into petitioner's interrogation room so Hinton could tell petitioner that he had cooperated with the police. Detective Louis testified that after this occurred, petitioner admitted to a version of events that was materially consistent with that set forth in the court-reported statements of both men above.

¶ 32 ASA Falagario also testified concerning the court-reported statement that he had taken from petitioner on March 13, 1999. He testified as to what petitioner said in that statement, which was again consistent with what is set forth in detail above.

¶ 33 Petitioner did not testify. After hearing all the evidence, the jury convicted petitioner of first-degree murder, and he was sentenced to natural life in prison. As mentioned above, this court affirmed petitioner's conviction on direct appeal.

¶ 34 F. Postconviction proceedings

¶ 35 On March 14, 2008, petitioner filed a postconviction petition in the Ares case, and on

February 26, 2009, he filed a postconviction petition in the Gagnier case. In both petitions, petitioner asserted claims of actual innocence and supported those claims with affidavits from Hinton. In the affidavits, Hinton recanted his previous statements and testimony implicating petitioner in the respective burglaries and murders of Ares and Gagnier. Hinton stated that he alone committed both burglaries and murders without petitioner's involvement or knowledge, and petitioner was not present at the scene of either. With respect to his trial testimony implicating petitioner in the Gagnier case, Hinton stated in his affidavit that he only testified at trial "because my attorney told me if I did not testify the State could take back my plea agreement," and he "felt compelled to testify because I did not want to face the death penalty."

¶ 36 The trial court consolidated the petitions and advanced the case for a third-stage evidentiary hearing. At that hearing, Hinton testified that as of the day of the Gagnier murder, he and petitioner had known each other for 15 years. They would use drugs together every day. Hinton paid for his illegal drug habit by committing burglaries and robberies. Hinton testified he committed most of these by himself, but petitioner participated in a few of them.

¶ 37 Hinton testified that on August 19, 1998, he used cocaine and heroin and then, acting alone, decided to burglarize the apartment where Gagnier lived. He had noticed the interior door was open, and the screen door had a slit in the screen. He reached in, lifted the latch, and opened the screen door. He went inside and grabbed a purse in the kitchen, when Gagnier confronted him. He forced her into the bedroom, where he raped her. He also choked her with his hands until she was not moving and did not appear to be breathing. After that, he ransacked the apartment and took valuables, including a camcorder, some jewelry, and movies. He took whatever he thought would be worth taking to trade for drugs or sell. He removed the cash and credit cards from her purse, which he left in a trash can in the alley.

¶ 38 With respect to the Ares murder, Hinton testified that on the night of February 12, 1999, he and Wales robbed a man near the Belmont train station and took his wallet. Wales then left, and Hinton went to buy drugs, which he used. The next morning, February 13, 1999, he was still high and decided to burglarize an apartment. He testified he was alone at this point. He selected an apartment building and went to the second floor. He knocked on the back door, and no one answered. He then climbed into the apartment through the transom window above the door, even though it was a tight squeeze. He explained he was in the kitchen of the apartment when he saw Ares, who confronted him. He grabbed a knife from the kitchen, told her to be quiet, and took her into another room where he demanded money. He took her purse, removed the money and her ATM card, and forced her to divulge her PIN number while threatening her with the knife. She told him the number. He testified that he then sexually assaulted her and choked her. He then took valuables from the apartment, closed the transom, and exited through the front door.

¶ 39 Hinton testified that he then went to an ATM and used Ares' card to withdraw money. After that, he went to buy drugs and telephoned petitioner. He told petitioner to meet him at a drug house, which petitioner did. Hinton told petitioner that he had obtained an ATM card when he "robbed a guy the night before." Later that day, Hinton used Ares' ATM card a second time, while petitioner was with him. They bought and used more drugs. He testified that he continued using Ares' ATM card into the following day, February 14, 1999, estimating he used it eight times in total. He testified that petitioner never used the card himself. Hinton said that he told petitioner to hide his face when Hinton was using the card because ATMs had cameras, but that one of the times he used the card, petitioner "didn't care" and stood next to him at the ATM.

¶ 40 Hinton testified that on the night of March 10, 1999, he received a call from his girlfriend, who told him that she had seen petitioner and him on the news. She later showed him

a newspaper with a picture of them using an ATM card. The next day, he and his girlfriend drove to petitioner's workplace to tell him about the news article. According to Hinton, petitioner said to him that they had nothing to worry about "because we just used the card." Petitioner got into the car with Hinton and his girlfriend, and they went to pick up Hinton's daughter from daycare. The police were there waiting for them, and they took Hinton and petitioner into custody.

¶ 41 Hinton testified he was placed into a small interrogation room, with his hands cuffed behind his back and his legs shackled. Three detectives interrogated him, and he remembered two of their names being Louis and Rossi. He testified that he first told them that he and Wales had obtained the ATM card by robbing a man. The detectives told him that the card had belonged to a woman who had been murdered, and they wanted to know how he came to possess it. According to Hinton, the detectives did not advise him of his *Miranda* rights. Eventually their questioning became more aggressive. After several hours, Hinton admitted that he committed the murder and stole the victim's card. Hinton testified that the detectives then asked him about what involvement petitioner and Wales had in the crime. He said that they did not believe him that he had committed the crime alone.

¶ 42 Hinton testified that at one point, one of the detectives grabbed him by the testicles while stating that "the truth is going to come out somehow, and he wasn't going nowhere." Hinton testified that the detective repeatedly grabbed his testicles and squeezed them while stating that he did not "appreciate the crime that took place" because the victims were white, as were the detective's wife and mother. Another detective hit Hinton in the side with a stick. Hinton stated that a detective also grabbed him from behind and choked him, and that the detectives also slapped him several times. Eventually, Hinton said he "didn't want no more problems," so he falsely told the detectives that petitioner and Wales were with him while committing the crimes.

Hinton testified that the detectives took him into a different room, where petitioner was located. He testified that initially he did not comply with the detectives' demands to confirm petitioner had been present for the murders, but Hinton eventually said to them "yeah he was there." He testified he did so because the officer threatened to punish him if he did not do so.

¶ 43 He testified that the detectives rehearsed with him what he should say before ASA Falagario arrived to take his statements. He said they went over his statements three or four times. He testified that the detectives would ask him questions that ASA Falagario was going to ask, and if he did not answer the way the detectives wanted him to, they would say "no this is not what you are supposed to say." Hinton identified the two statements he made on March 12, 1999. Hinton admitted that in both statements, he stated that he had been treated fine by the police. He stated that the reason he did not tell ASA Falagario he had been mistreated was because Detective Louis was present, and he thought he would be punished if he said that.

¶ 44 Hinton stated that the reason he had previously testified falsely against petitioner at the trial in the Gagnier case was because petitioner had not honored the agreement that the two of them had made that, while in jail, they were not going to speak about the nature of the crimes they were charged with. He explained that petitioner had told numerous other inmates, and Hinton had to go into protective custody because of the stigma on rapists among the inmates. Hinton became upset because of this, and that is why he falsely implicated petitioner in the murder of Gagnier. On cross-examination, Hinton admitted that his postconviction affidavit stated a different reason for his trial testimony in the Gagnier case. He agreed that he had stated in his affidavit that his reason for testifying was "because my attorney told me if I did not testify the State could take back my plea agreement." He admitted that this statement in his affidavit was not accurate. He admitted that he did not have a plea agreement, but instead he had entered a

blind guilty plea. When asked if an attorney told him this, he stated he did not have an attorney.

¶ 45 On cross-examination, Hinton acknowledged that on May 6, 1999, he had given a court-reported statement to ASA Eric Leafblad in which he confessed to murdering a third woman in 1996. He acknowledged that Detectives Louis and Rossi had questioned him about that 1996 murder. He agreed that he had not implicated petitioner in that third murder.

¶ 46 Hinton also acknowledged on cross-examination that he gave a third court-reported statement on March 12, 1999, this time to ASA Robert Milan. This occurred after Hinton attempted suicide in the interrogation room following his confessions to the two murders. Hinton agreed that in that third statement, concerning his treatment by the police following his arrest, he said to ASA Milan, "I had been treated with respect and dignity and they treated me fine for a person that just did these types of crimes." However, on the stand, Hinton stated he had not in fact been treated well by the police.

¶ 47 Hinton was questioned about additional statements he had given on March 24, 1999, concerning additional burglaries and robberies Hinton had confessed to committing. There were five instances in which Hinton acknowledged that he had signed a handwritten statement implicating petitioner in a burglary or robbery, but testified on the stand that petitioner had not actually been present and the statement was wrong. The first was a robbery on July 27, 1997, which Hinton said he committed only with a man named Antoine Johnson. He acknowledged, however, that he signed a written statement in which he said petitioner drove the getaway car. Asked about the discrepancy, Hinton said, "I don't know how he even got in that statement because it wasn't him. So I wasn't physically forced to implicate him but I don't know how it came about."

¶ 48 The second involved a robbery on December 4, 1998, for which Hinton said petitioner

was not present. However, he again acknowledged signing a written statement in which he said petitioner drove the getaway car. He said that his statement had been incorrect. Asked if the police made him implicate petitioner, Hinton said, "No, they didn't make me say it. But I don't know why he was in that—implicated in that if he wasn't—I thought that I told them somebody else was with me."

¶ 49 Hinton went on to give similar testimony with respect to three additional incidents of residential burglary, in which Hinton testified petitioner had not been present but acknowledged signing a written statement indicating that petitioner had been involved. Further, he testified to three more statements from March 24, 1999, involving other robberies and burglaries in which Hinton had implicated petitioner and agreed on the stand that petitioner was in fact involved.

¶ 50 Finally, Hinton acknowledged preparing and signing the affidavit dated August 11, 2003. Hinton testified that he had prepared and signed this affidavit before he learned, sometime in about May 2004, that petitioner had talked to other inmates in the county jail about the nature of the crimes that Hinton had been charged with.

¶ 51 The next witness called by petitioner at the evidentiary hearing was Dana Stevens, a pastor who knew Hinton and visited him in jail in March 1999. Stevens testified that Hinton said to him then that petitioner "had nothing to do with the crimes" they were charged with. Over the State's hearsay objection, the trial court indicated it would allow that testimony and consider it if the State argued that Hinton's recantation was recently fabricated.

¶ 52 Petitioner himself then testified. The trial court allowed his testimony for the limited purpose of evaluating Hinton's recantation of his previous testimony and statements. Petitioner testified he had not been present for either murder, and that Hinton had not told him that the ATM card they were using on February 14, 1999, had belonged to a woman he had murdered.

Petitioner stated that when his interrogation began, he was not informed of his *Miranda* rights. He said that when he initially told Detectives Louis and Rossi that he was not involved in any crimes, they slapped him multiple times and punched him in the lip, telling him they did not believe him. He testified that at one point he had been taken into another room with other police officers, one of whom had directed a racial slur at him. He stated that eventually Detectives Louis and Rossi told him that Hinton had confessed and told them about petitioner's involvement. Petitioner did not believe them, so the officers brought Hinton into the doorway of the room where petitioner was. According to petitioner, Detective Louis said to Hinton, "Wasn't he there?" At first, Hinton did not respond. Detective Louis grabbed Hinton by the shirt and pushed him against the frame of the door. He then took Hinton out of the room for a while before eventually bringing him back in. At that point, Hinton answered "yeah" or nodded his head.

¶ 53 Petitioner testified that Detectives Louis and Rossi had said to him that they knew he did not have anything to do with the murders, but they wanted him to say he was there. Petitioner stated that they told him repeatedly that if he cooperated, he would be charged only with burglary and not murder. Petitioner testified that eventually, "They broke me. I just went along with whatever they wanted me to do at that time." He stated that the detectives then rehearsed the stories of the crimes with him for several hours, until he was able to fully recite the stories to ASA Falagario in the way the detectives wanted him to. However, petitioner admitted that, despite believing he would be charged only with burglary provided he agreed he was present, he had also told ASA Falagario that he had put a pillow over Ares' mouth while Hinton was choking her. Petitioner testified that the part about putting the pillow over Ares' mouth had not been something he rehearsed with Detectives Louis and Rossi, but it was something ASA Falagario had told him to add when he was meeting with him alone before the statement.

¶ 54 The State called as witnesses several Assistant State's Attorneys who had interviewed Hinton in March 1999. First, ASA Falagario testified to the initial statements he had taken from both Hinton and petitioner. ASA Falagario testified that he had asked both men how they had been treated by the police since being arrested, and both reported that they had been treated well. ASA David Williams testified that on March 23 and 24, 1999, he and a detective had driven with Hinton around the Rogers Park neighborhood of Chicago, and Hinton showed them various locations where he, petitioner, and Wales had committed residential burglaries and robberies. ASA Williams testified that during this process, Hinton was cooperative and engaging, and he never complained in any way about his treatment by the police. Finally, ASA Leafblad testified concerning the May 6, 1999, statement he had taken from Hinton concerning the third murder in 1996. He stated he had asked Hinton then how the police had treated him, and Hinton never complained or mentioned that he had been threatened or forced to implicate petitioner in any of his previous murder investigations.

¶ 55 After receiving all the testimony and evidence presented at the third-stage evidentiary hearing, as well as the entire record from both the Ares case and the Gagnier case, the trial court issued a 19-page written order denying petitioner's petitions for postconviction relief. Petitioner now appeals.

¶ 56 II. ANALYSIS

¶ 57 The Post-Conviction Hearing Act (725 ILCS 5/122-1(a)(1) (West 2014)) provides a means by which a person under criminal sentence may challenge his conviction or sentence by showing that, in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or the State of Illinois. *People v. Pendleton*, 223 Ill. 2d 458, 471 (2006). "The conviction of an innocent person violates the due

process clause of the Illinois Constitution." *People v. Morgan*, 212 Ill. 2d 148, 154 (2004). Thus, one basis by which a person may obtain relief under the Act is by providing "compelling evidence of actual innocence." *People v. Coleman*, 2013 IL 113307, ¶ 94 (quoting *People v. Washington*, 171 Ill. 2d 475, 489 (1996)). However, our supreme court has described the standard of providing "compelling evidence of actual innocence" as being "extraordinarily difficult to meet." *Id.* In a postconviction proceeding, the trial court is not redetermining a petitioner's innocence or guilt, but instead examines constitutional issues that escaped earlier review. *People v. Blair*, 215 Ill. 2d 427, 447 (2005).

¶ 58 In cases where the death penalty is not involved, postconviction petitions are adjudicated in three stages. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). In this case, the petition advanced to the third stage, which is the stage at which the trial court conducts an evidentiary hearing. *Id.* at 246; 725 ILCS 5/122-6 (West 2014). At the third stage, the burden is on the petitioner to make a substantial showing of a deprivation of constitutional rights. *People v. Coleman*, 206 Ill. 2d 261, 277 (2002). At this stage the trial court serves as the fact finder, and thus it is it the trial court's function to determine witness credibility, decide the weight to be given testimony and evidence, and resolve any evidentiary conflicts. *People v. Domagala*, 2013 IL 113688, ¶ 34. After the evidentiary hearing, the trial court must determine whether the evidence introduced demonstrates that the petitioner is, in fact, entitled to relief. *Id.*

¶ 59 The substantive standards governing a claim of actual innocence, such as the one raised here, have been described by our supreme court as follows:

> "Substantively, in order to succeed on a claim of actual innocence, the defendant must present new, material, noncumulative evidence that is so conclusive it would probably change the result on retrial. [Citation.] New means the evidence was discovered

> after trial and could not have been discovered earlier through the exercise of due diligence. [Citation.] Material means the evidence is relevant and probative of the petitioner's innocence. [Citation.] Noncumulative means the evidence adds to what the jury heard. [Citation.] And conclusive means the evidence, when considered along with the trial evidence, would probably lead to a different result. [Citation.]" *Coleman*, 2013 IL 113307, ¶ 96.

¶ 60 A trial court typically reviews the evidence presented at the evidentiary hearing to determine first whether it was new, material, and noncumultiave. *Coleman*, 2013 IL 113307, ¶ 97. "If any of it was, the trial court must then consider whether that evidence places the evidence presented at trial in a different light and undercuts the court's confidence in the factual correctness of the guilty verdict." *Id.* "This is a comprehensive approach and involves credibility determinations that are uniquely appropriate for trial judges to make." *Id.*

¶ 61 Where, as here, the trial court has held an evidentiary hearing on a postconviction petition at which the trial court was required to consider new evidence and weigh the credibility of witnesses, we will disturb the trial court's judgment only if it is manifestly erroneous. *Morgan*, 212 Ill. 2d at 155. Manifest error is "clearly evident, plain, and indisputable." *Id.*

¶ 62 With respect to the substantive elements of a claim for actual innocence, the parties are in agreement that the trial court correctly determined that Hinton's testimony that petitioner was not present during the rapes or murders of either victim met the standard of being material and not cumulative of evidence that was presented at petitioner's trials. Instead, the parties' disagreement centers on whether the trial court's determinations were manifestly erroneous with respect to (1) whether the information provided by Hinton constituted "newly discovered" evidence, and (2) whether Hinton's recanted testimony was "so conclusive it would probably change the result on

retrial." We conclude from our review of the record that we do not need to determine whether Hinton's testimony qualified as new evidence, because the trial court's determination that the evidence was not so conclusive that it was likely to change the result on retrial was not manifestly erroneous.

¶ 63 The question of the conclusiveness of the evidence is the most important element of an actual innocence claim. *People v. Sanders*, 2016 IL 118123, ¶ 47. To establish a claim for actual innocence, the evidence presented "must be of such conclusive character that it would probably change the result on retrial." *Morgan*, 212 Ill. 2d at 154. In other words, the petitioner's evidence must be "so conclusive that it is more likely than not that no reasonable juror would find him guilty beyond a reasonable doubt." *Sanders*, 2016 IL 118123, ¶ 47. It is the trial court that "in effect predicts what another jury would likely do, considering all the evidence, both new and old, together." *Coleman*, 2013 IL 113307, ¶ 97.

¶ 64 Our supreme court has recognized "that the United States Supreme Court has emphasized that such claims must be supported 'with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial.'" *People v. Edwards*, 2012 IL 111711, ¶ 32 (quoting *Schlup v. Delo*, 513 U.S. 298, 324 (1995)). The recantation of testimony by a witness is regarded as "inherently unreliable." *Morgan*, 212 Ill. 2d at 155. However, "recantation statements should not simply be dismissed without further analysis." *People v. Serrano*, 2016 IL App (1st) 133493, ¶ 26. Rather, it is the role of 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. Only in "extraordinary circumstances" will courts grant a new trial on the basis of recantation of testimony. *Id.* at 155.

¶ 65 In its order denying postconviction relief, the trial court stated that, after observing

Hinton's demeanor at the evidentiary hearing, his testimony did nothing to undermine the accuracy of the two statements he gave on the day following his arrest or his trial testimony in the Gagnier case. The trial court stated it had found Hinton "entirely incredible due to various inconsistencies in his testimony and his own admission that his affidavit contained false statements." The trial court cited Hinton's affidavit attached to the postconviction petition in the Gagnier case, in which Hinton stated that the reason he testified against petitioner at trial was because "my attorney told me if I did not testify the State could take back my plea agreement." However, at the evidentiary hearing, Hinton admitted that this statement in his affidavit was false. He testified at the evidentiary hearing that his true reason for testifying falsely at the trial was the fact that he was angry at petitioner for betraying him by telling other inmates at the jail about the nature of the crimes Hinton had committed. The trial court also noted Hinton's inconsistent statements at the hearing denying the petitioner's involvement in many of the numerous other robberies and burglaries that Hinton admitted committing between July 1997 and March 1999. That testimony was rebutted by the many signed statements Hinton gave on March 24, 1999, in which Hinton in fact implicated petitioner in every offense.

¶ 66 The record supports the trial court's determination that Hinton was not a credible witness. Having reviewed his testimony at the evidentiary hearing, we agree that it contains a number of inconsistencies beyond the examples cited by the trial court. Hinton's credibility in recanting his previous testimony was obviously the most significant factor affecting petitioner's petitions for postconviction relief. The point of the third-stage evidentiary hearing in this case was for the trial court to evaluate the credibility of Hinton's recantation, and to determine if his testimony was of a conclusive enough nature that, more likely than not, no reasonable juror would have found petitioner guilty beyond a reasonable doubt if the cases were retried. The trial court, having

listened to Hinton's testimony and observed his demeanor as a witness, concluded that his credibility in recanting his previous testimony did not meet the necessary standard. "Credibility determinations of this kind were for the trial court to make, and we have no basis in the record before us for second-guessing its judgment." *Morgan*, 212 Ill. 2d at 162.

¶ 67 Petitioner argues on appeal that the trial court "dwelled on the matter of Hinton's credibility in isolation." He characterizes the examples of inconsistent statements cited by the trial court as "minor," arguing that the trial court failed to view Hinton's testimony in the broader context of the evidence, in which there was no independent corroboration of his involvement in the burglary of either apartment or the rape and murder of either victim. Petitioner relies heavily on the fact that there was no physical or forensic evidence linking him to either crime scene. He argues that no eyewitnesses or independent witnesses placed him at the scene of either murder or otherwise directly implicated him in the crimes. And he argues there was no evidence that he himself ever possessed or used the ATM card taken from Ares or sold any items taken from either apartment.

¶ 68 In support of his arguments that these factors warrant a finding that the trial court's decision was manifestly erroneous, petitioner cites *People v. Burrows*, 172 Ill. 2d 169 (1996). In *Burrows*, the supreme court held that a trial court's decision to grant a new trial based on the recantation of testimony by a witness was not against the manifest weight of the evidence. *Id.* at 181. The witness who recanted was a co-defendant, who had been the State's key witness against the defendant at trial, where she testified that the defendant committed a murder with her. *Id.* at 173-74. She recanted this testimony in a post-judgment and postconviction evidentiary hearing, at which she testified that she acted alone. *Id.* at 176-77. The defendant also presented the new testimony of a separate alibi witness, who had moved out of state and could not be located at the

time of the trial, that the defendant had been with her on the night of the murder. *Id.* at 178-79. The alibi witness also testified that, on the day after the murder, the recanting witness had told her that she had killed a man the night before in a manner that was consistent with her recantation testimony. *Id.* at 178. The defendant's conviction at trial had been primarily based on the testimony of that co-defendant who later recanted, as well as that of another witness who had also later recanted his testimony that the defendant had been present when the murder occurred. *Id.* at 181. The supreme court remarked that it was "noteworthy" that no physical evidence linked the defendant to the crime. *Id.* at 181.

¶ 69 *Burrows* does not support petitioner's argument that the trial court's decision was manifestly erroneous in this case. A significant distinction is that in *Burrows*, the supreme court was reviewing a trial court's determination to grant a new trial after an evidentiary hearing to evaluate the credibility of the recantation testimony. Here, after an evidentiary hearing to evaluate the credibility of Hinton's recantation testimony, the trial court denied the petitions for new trials. *Burrows* supports the proposition that the decision to grant a new trial is a determination within "the province of the trial court," which considers the evidence and evaluates the credibility and demeanor of the witnesses. *Id.* at 180. Further, part of the new evidence presented to the trial court in *Burrows* was the testimony of an alibi witness who could not be located at the time of the first trial. No similar alibi evidence was ever presented in this case. Finally, while the absence of physical evidence linking the defendant to the crimes may have been noteworthy in *Burrows*, here petitioner himself gave court-reported statements in which he admitted being present for and participating in the crimes at issue. This case therefore presents a different situation from the facts present in *Burrows*.

¶ 70 Petitioner also argues that the trial court's decision was manifestly erroneous because the

trial court did not give sufficient weight to the evidence of police coercion of Hinton. Petitioner argues that Hinton's testimony of coercion is corroborated by the fact that petitioner himself alleges that he was also coerced by police to give a false statement. He points out that the "high profile nature of the crime and investigation," combined with the fact that petitioner was shown on surveillance video using Ares' ATM card, supports the conclusion that the police officers could not have been satisfied with Hinton's confession that he acted alone in the crimes. Petitioner points out that both he and Hinton filed pre-trial motions to suppress, in which both men made similar allegations that their statements were the result of physical and verbal abuse by police officers. Hinton alleged then, as he does now, that when he refused to implicate petitioner in the crimes, the detectives repeatedly squeezed his testicles, struck him with a stick, and choked him from behind. Petitioner alleged also that when he refused to confess, the detectives slapped him in the face and punched him in the lip. He points out that both he and Hinton testified to "racial overtones in the interrogation."

¶ 71 We find that the trial court's conclusion that Hinton's statements were not the product of coercion to be fully supported by the record. The trial court heard substantial testimony from Hinton and petitioner on this topic on both direct and cross-examination, as well as the testimony of multiple Assistant State's Attorneys who had discussed the issue of police treatment with both men at the time they were giving their statements. The evidence showed that each time Hinton gave a statement, the Assistant State's Attorney questioning him would ask him how he was being treated by the police. Each time, Hinton said he was being treated well. In fact, in the statement he gave following his suicide attempt, he stated to ASA Milan that the police treated him "with respect and dignity for a person that just did these types of crimes." It would appear from the evidence that Hinton had a number of opportunities in March 1999 to tell various

Assistant State's Attorneys or police officers that he had been mistreated when he was initially questioned following his arrest, and there was no evidence presented that he did so. Having received all the evidence and testimony on this topic, it was the trial court's function to resolve the evidentiary conflicts and serve as the finder of fact. *Domagala*, 2013 IL 113688, ¶ 34. Petitioner's arguments are nothing more than a request for this court to reweigh the evidence and make credibility determinations, and we will not do so.

¶ 72 Concerning the trial court's rejection of petitioner's claim that his own statements to the police were coerced, petitioner argues that new evidence presented in the evidentiary hearing calls into question the reliability of his statements. After reviewing the record, however, we agree with the trial court that petitioner adduced no new evidence of the coercion of his own statements beyond what he already litigated fully in the underlying proceedings. All of the evidence presented by petitioner at the evidentiary hearing was previously raised by him in his pre-trial motion to suppress his statements or his motion to reopen the suppression hearing. Those motions were denied, and this court affirmed the trial court's ruling on appeal in the Ares case. *Sanders*, 372 Ill. App. 3d 1098 (unpublished order under Supreme Court Rule 23).

¶ 73 Petitioner nonetheless argues that his statements do not comport with the physical evidence and therefore must be the product of coercion. Petitioner points first to the fact that he said in his statement that when the three men left Ares' apartment, Wales exited through the back door. He argues, however, that such an exit would have been impossible because the trial testimony showed that a plastic chair was found in front of the back door that would have prevented it from opening outward. Second, he points out that in his statement, he said that he held a pillow over Ares' mouth while Hinton choked her. He argues similarly that this would have been impossible, because no pillows were shown in certain photographs of the murder

scene, no pillows were inventoried, and the detective who photographed the scene did not remember if he had seen pillows on the bed. We have reviewed the testimony and evidence cited by petitioner on these points, and it does not change our conclusion that the trial court committed no manifest error in its finding that petitioner's statements were not the result of coercion.

¶ 74 Petitioner makes a similar argument that his statements contain "implausible consistencies" with Hinton's statements, from which he seeks to have us conclude that the police must have coerced him into giving statements "modeled after the ones Hinton gave hours before." He cites the fact that both men mentioned that before going to Gagnier's apartment they were drinking "St. Ides," and both men described it as a "malt liquor." He cites the fact that both men referred to taking "costume jewelry" from Gagnier and referring to the color of the t-shirt she was wearing as "off-white." He similarly references the statement by both men that Ares said she was a "social worker," and that it would not look as "suspicious" if the three men left her apartment through separate doors. We do not find any merit to this argument by petitioner. Instead, we find that the consistency in the details between Hinton's statements and petitioner's statements fully supports the trial court's conclusions in this case.

¶ 75 Next, petitioner argues that the absence of any mention of the testimony by Dana Stevens in the trial court's order undermines the trial court's conclusion that Hinton's recantation was not credible. Stevens testified at the evidentiary hearing that Hinton said to him in March 1999 that petitioner "had nothing to do with the crimes" that the two men were charged with. The trial court received this evidence subject to a hearsay objection, stating that it would consider the evidence only to rebut a claim by the State that Hinton had recently fabricated his recantation testimony. We presume the trial court followed the law with respect to this evidence, as nothing in the record indicates otherwise. *People v. Gaultney*, 174 Ill. 2d 410, 420 (1996). Regardless, we

do not find anything in this testimony by Stevens that would lead us to conclude that the trial court's conclusions about Hinton's lack of credibility were manifestly erroneous.

¶ 76 Finally, petitioner argues that the trial court's conclusion that Hinton was not a credible witness is undermined by the fact that Hinton's stated rationale for testifying falsely at the Gagnier trial is corroborated by the record in the underlying case. At the evidentiary hearing, Hinton stated that the reason he testified falsely against petitioner was because he was angry at petitioner for having talked in jail about the nature of the crimes that Hinton was charged with, after which other inmates began "giving [Hinton] a hard time," which forced Hinton to check into protective custody. Petitioner argues that this statement is corroborated by statements in the underlying record in which Hinton's attorney informed the trial court that Hinton was having problems with other inmates and noted that Hinton was in protective custody.

¶ 77 However, the statements by Hinton's attorney that petitioner relies upon are from August and November 1999. According to Hinton's own testimony at the evidentiary hearing, he did not learn that petitioner had talked about the crimes to other inmates until close to the time of his guilty plea, which was May 11, 2004. Hinton discussed learning this when he explained why he had been willing to prepare the August 11, 2003, affidavit stating petitioner had "nothing to do with the crimes he is charged with," but then testified against him in the Gagnier trial in October 2004. As such, the statements by Hinton's attorney in 1999 do nothing to corroborate Hinton's proffered reason for testifying falsely.

¶ 78 III. CONCLUSION

¶ 79 In conclusion, we find that the trial court properly evaluated Hinton's testimony recanting his previous statements and testimony implicating petitioner in the murders of Ares and Gagnier. We find that the trial court fully considered this testimony in the context of the entire record

from the proceedings in both cases. Having done so, it determined that Hinton's recantation testimony was not "of such conclusive character that it would probably change the result on retrial." *Morgan*, 212 Ill. 2d at 154. As such, it concluded that petitioner had not made the necessary showing of a substantial deprivation of constitutional rights, had not proven his actual innocence, and was not entitled to a new trial. We find no manifest error in this conclusion, and we affirm the trial court's denial of postconviction relief.

¶ 80 Affirmed.