

No. 1-12-3129

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County.
	)	
v.	)	No. 02 CR 15262
	)	
CARLOS SANTOS,	)	Honorable Steven
	)	J. Goebel,
Petitioner-Appellant.	)	Judge Presiding.

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JUSTICE LIU delivered the judgment of the court.  
Presiding Justice Simon and Justice Neville concurred in the judgment.

**ORDER**

¶ 1 *HELD:* Second-stage dismissal of postconviction petition affirmed where petitioner failed to make a substantial showing of a *Brady* violation.

¶ 2 Petitioner Carlos Santos (petitioner) appeals from the dismissal of his petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2012). He contends that the circuit court erred in dismissing his petition where he made a substantial showing that the State violated his due process rights by failing to disclose evidence as required

under *Brady v. Maryland*, 373 U.S. 83 (1963). Specifically, petitioner contends that the State violated *Brady* by not turning over an alleged audiotape of an interview between detectives and petitioner's mother during which the detectives allegedly told his mother that they would charge her with a crime if she did not answer their questions. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Petitioner's conviction stems from a shootout over a drug debt, which resulted in the shooting death of Jeffrey Smith (Jeffrey). Petitioner was 24 years old at the time of the offense. He and Alexander Valencia sold a kilo of heroin, worth \$70,000, to the victim's father, James Smith (James) on consignment. Petitioner and Valencia made repeated attempts to collect the debt from James, but he refused to pay them or return the drugs. Petitioner and Valencia then hired two Cook County Sheriff's Deputies, John Lavelle and Estaban Perkins, to help them collect the debt.

¶ 5 On May 3, 2002, petitioner, Valencia, Lavelle, and Perkins travelled in two cars to James' house. Valencia remained in one car while petitioner, Lavelle, and Perkins went to the door. James' son, Jeffrey, answered the door holding a gun. Perkins ran back to Valencia's car and drove away, with Valencia in the passenger seat and others in the back seat. A shootout then ensued at the house, and Jeffrey was fatally wounded from the gunfire.

¶ 6 Shortly thereafter, petitioner and Valencia were arrested.<sup>1</sup> Petitioner agreed to speak with the officers and gave a videotaped statement on May 15, 2002. Detective John Trahanas testified about petitioner's statements during both the suppression hearing and the trial. According to Detective Trahanas' testimony, on the night petitioner was arrested, Sergeant Tony Wojcik read petitioner his *Miranda* rights, and petitioner agreed to speak with Detective Trahanas and

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<sup>1</sup> Lavelle and Perkins were also arrested. Lavelle ultimately was convicted of felony murder, (*People v. Lavelle*, 396 Ill. App. 3d 372, 382 (1st Dist. 2009)); Perkins took a plea bargain, pleading guilty to official misconduct, and was sentenced to four years' imprisonment.

Sergeant Wojcik. Initially, petitioner denied any knowledge or participation in Jeffrey's homicide. Eventually, however, he acknowledged that he was present during the shooting but denied being the one who shot Jeffrey.

¶ 7 Detective Trahanas further testified that the next morning at around 2:45 a.m., Sergeant Wojcik again read petitioner his *Miranda* rights, and petitioner agreed to speak with them. According to Detective Trahanas, petitioner then went through a chronological timeline of the events leading up to the shooting, explaining that he and Valencia had given the drugs to James on consignment. Petitioner stated that after multiple failed attempts to receive payment from James, they hired John Lavelle to help them collect the debt. The three planned to go to Smith's house and either collect the money or the drugs or kidnap James and hold him for ransom. Because Lavelle did not want to go alone, on their way to James' house they picked up another Cook County sheriff, Perkins, to assist them.

¶ 8 Detective Trahanas testified that petitioner continued to tell the officers that when they arrived at James' house, he, Lavelle, and Perkins went to the front door. Eventually, Jeffrey came out of the house holding a large gun. Perkins took off running, and petitioner and Lavelle fired their weapons and fled the scene. Petitioner then related to the officers the events occurring when the men met up later that evening after the shooting, including admitting that his mother and sisters eventually joined them near the intersection of Kostner and Armitage in Chicago.

¶ 9 After making his oral statements, at around 9:30 a.m., petitioner had a conversation with Assistant State's Attorney Arunas Buntinas. Petitioner then agreed to make a videotaped statement, which was consistent with his previous statements.

¶ 10 Before trial, petitioner moved to suppress his inculpatory statements, arguing, *inter alia*, that the detectives told him that if he refused to speak with them, "members of his family would

be arrested." During the hearing on the motion to suppress, petitioner testified that the officers told him that if he "cooperate[d]" with them, they would "let [him] go" and would not "press charges against [petitioner's] family." Petitioner further testified that he made his statements to the officers after his mother had visited him.

¶ 11 Petitioner's mother, Aidali Oquendo, also testified during the suppression hearing. She stated that when she learned her son had been arrested, she retained a lawyer and went to the police station. According to Oquendo, the officers ended up questioning her while she was there. In his postconviction petition, petitioner alleges that the officers threatened his mother during this interview and that the threats were documented on an audiotape in the officers' possession, which they never disclosed in violation of *Brady*. During the suppression hearing, however, Oquendo did not mention any such threats. The parties also stipulated during the suppression hearing that if Detective Kenneth Boudreau, one of the detectives who spoke with Oquendo, was called to testify, he would state that the interview with Oquendo took place on May 17, 2002, which was two days after petitioner made his inculpatory statement on May 15, 2002.

¶ 12 Detective Trahanas testified during the suppression hearing that neither he nor his fellow officers ever told petitioner "that if he didn't help[,] his family would get locked up and that he would go to jail for life." Detective Trahanas further stated that at no time during their conversations with petitioner did any of the officers tell him that "if he didn't talk to [them], members of his family would be arrested" and they "would lock-up his entire family."

¶ 13 The circuit court denied petitioner's motion to suppress, finding that petitioner made the statements after voluntarily and knowingly waiving his *Miranda* rights. The court also rejected petitioner's testimony that he met with his mother before making his videotaped statement;

instead the court concluded that the meeting "took place at least two days after" the videotaped statement.

¶ 14 After a jury trial, petitioner was convicted of felony murder (720 ILCS 5/9-1(a)(3) (West 2002)). He also was found to have personally discharged a firearm during the course of the first degree murder. Petitioner was sentenced to 35 years for murder and 20 years for the firearm enhancement, for a total of 55 years' imprisonment.

¶ 15 On direct appeal, petitioner argued that (1) the State failed to prove his guilt by a reasonable doubt; (2) his counsel was ineffective for failing to request a jury instruction on self-defense; (3) the trial court abused its discretion when it allowed the State to *nolle prosequi* the knowing and intentional murder counts just prior to trial; and (4) the trial court erred when it sent a dictionary to the jury without first consulting defense counsel. This court affirmed the conviction. *People v. Santos*, No. 1-07-2007 (2009) (unpublished order under Supreme Court Rule 23). The supreme court denied his petition for leave to appeal on March 24, 2010. *People v. Santos*, 235 Ill. 2d 536 (2010).

¶ 16 In December 2010, petitioner, through privately retained counsel, filed his postconviction petition under 725 ILCS 5/122-1, arguing, *inter alia*, that he was denied his right to due process. Specifically, petitioner alleged that the State violated *Brady v. Maryland* by failing to disclose an alleged audiotape of Detectives Boudreau and Trahanas' interview with petitioner's mother (Oquendo) and her attorney.<sup>2</sup> During this interview, the detectives allegedly told Oquendo that they knew she was involved in paying Perkins and Lavelle for their assistance in collecting the drug debt and that "if she did not answer their questions she would be charged with a crime." The postconviction petition included an affidavit from Oquendo, in which she attested that the

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<sup>2</sup> There is no indication from the record that Detective Boudreau was present when petitioner made his inculpatory statements to Detective Trahanas and Sergeant Wojcik.

interview had been taped and that an attorney she had hired was present. It additionally included an affidavit from petitioner stating that this alleged recording was never disclosed to petitioner or his attorneys and that he did not learn about the alleged audiotape until after his trial.

¶ 17 Petitioner's case was advanced to the second stage of postconviction proceedings, and the State moved to dismiss the petition. After hearing arguments from counsel, the circuit court dismissed the petition in a written order on September 11, 2012. Petitioner appeals, and we have jurisdiction pursuant to Illinois Supreme Court Rule 651. Ill. S. Ct. R. 651 (eff. Feb. 6, 2013).

¶ 18 ANALYSIS

¶ 19 The Act "provides a mechanism" by which a criminal defendant may assert that his conviction was "the result of a substantial denial" of his constitutional rights. *People v. Delton*, 227 Ill. 2d 247, 253 (2008). At the second stage of proceedings, the petitioner has the burden of making a substantial showing of a constitutional violation. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). A petition may be dismissed at this stage "only when the allegations \*\*\*, liberally construed in light of the trial record, fail to make" such a showing. *People v. Hall*, 217 Ill. 2d 324, 334 (2005). "[A]ll well-pleaded facts that are not positively rebutted by the trial record are \*\*\* taken as true[.]" *Pendleton*, 223 Ill. 2d at 473. We review *de novo* the dismissal of a postconviction petition without an evidentiary hearing (*Hall*, 217 Ill. 2d at 334), and may affirm the circuit court's judgment on any basis supported by the record (*People v. Anderson*, 401 Ill. App. 3d 134, 138 (2010)).

¶ 20 Here, petitioner alleges that the failure of the State to disclose the alleged audiotape of Detectives Trahanas and Boudreau's interview with his mother violated *Brady* because it was material to impeaching Detective Trahanas, who testified during the suppression hearing that he did not tell petitioner that they would arrest his family if he failed to cooperate with them.

¶ 21 "The State has a constitutional obligation to disclose evidence that is both favorable to the accused and 'material either to guilt or to punishment.'" *People v. Burt*, 205 Ill. 2d 28, 46-47 (2001) (quoting *Brady*, 373 U.S. at 87). Evidence is material if it " 'could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. [Citation.]' " *Strickler v. Greene*, 527 U.S. 263, 290 (1999). A *Brady* claim requires a showing that "(1) the evidence is favorable to the defendant because it is either exculpatory or impeaching; (2) the evidence was either willfully or inadvertently suppressed by the State; and (3) prejudice ensued to the defendant." *Burt*, 205 Ill. 2d at 47.

¶ 22 Petitioner has failed to make a substantial showing of a *Brady* violation because the allegedly withheld evidence is not material to his conviction and, as a result, did not prejudice him. The alleged taped conversation took place two days after petitioner made his inculpatory statement to detectives. Detective Trahanas' alleged statement to petitioner's mother that "if she did not answer their questions she would be charged with a crime," does not cast doubt on the credibility of Detective Trahanas' testimony on a different topic during the suppression hearing—whether he threatened petitioner's family before petitioner made his inculpatory statement. The two statements are not "materially inconsistent." See *Schiff v. Friberg*, 331 Ill. App. 3d 643, 656 (1st Dist. 2002) ("To be used for impeachment, a witness' prior statement must be materially inconsistent with his or her trial testimony.")). Accordingly, we cannot say that the disclosure of this alleged statement would affect Detective Trahanas' credibility before the circuit court such that it "could reasonably be taken to put the whole case in such a different light"; it neither undermines the confidence in the circuit court's ruling on the motion to suppress nor in the conviction. *Strickler*, 527 U.S. at 290. Petitioner, therefore, has not made a showing of the

requisite prejudice for a *Brady* violation and consequently is not entitled to proceed with his postconviction petition.

¶ 23

CONCLUSION

¶ 24 For the above reasons, petitioner has failed to make a substantial showing of a *Brady* violation. The circuit court's judgment is affirmed.

¶ 25 Affirmed.