2016 IL App (3d) 150677-U

Order filed November 1, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 13th Judicial Circuit, La Salle County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-15-0677 Circuit No. 08-CF-213
CALVIN MERRITTE,	)	
Defendant-Appellant.	)	Honorable H. Chris Ryan, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court had jurisdiction throughout the prior criminal proceedings. The trial court did not err in denying defendant's motion to substitute judge. The trial court did not err in denying defendant's section 2-1401 petition since the purported newly-discovered evidence was not of such a conclusive character that it would likely change the result on retrial. Defendant did not present sufficient evidence in support of his claim for a new sentencing hearing.

¶ 2 Defendant, Calvin Merritte, appeals the denial of his section 2-1401 petition. Defendant argues that: (1) the trial court lacked jurisdiction throughout the proceedings; (2) Judge H. Chris Ryan lacked authority to rule on the section 2-1401 petition since defendant named Judge Ryan

in a motion to substitute judge; (3) defendant's section 2-1401 petition set forth a meritorious claim that defendant is entitled to a new trial based on newly discovered evidence; and (4) defendant is entitled to a new sentencing hearing. We affirm.

¶ 3 FACTS

¶ 4 The State charged defendant with criminal drug conspiracy (720 ILCS 570/405.1 (West 2008)). The indictment listed Clarence Merritte, Michael Goldsmith, Paul Forbes, Michael Thompson, Aaron Flex, Johnny Andrews, Kwame Riddle, Darnell Smith, Melissa Lobb, Shelby Stevens, Joy Forbes, and William Bradley as codefendants with regard to the charge of criminal drug conspiracy. The State also charged defendant with five counts of possession of a controlled substance with intent to deliver (720 ILCS 570/401 (West 2008)). The State later amended the indictment to reduce the charge of unlawful possession of a controlled substance with intent to deliver for an incident that allegedly occurred on February 20, 2007, to unlawful possession of a controlled substance.

¶ 5 With regard to the criminal drug conspiracy charge, the indictment alleged that defendant and the other coconspirators conspired to commit the offense of unlawful possession with intent to deliver, unlawful delivery, and unlawful possession of various amounts of cocaine and heroin. The indictment alleged that the coconspirators used women to transport heroin and cocaine from Chicago to La Salle County by having the women conceal the heroin and cocaine in their vaginas. The indictment alleged that defendant "organized, directed, managed, controlled and supervised a heroin and cocaine distribution operation" in La Salle County. The indictment also alleged that defendant and his coconspirators conducted drug distribution activities at various locations, including a residence located at 1503 West Jackson Street in Ottawa, Illinois (the Jackson Street house).

¶ 6 A bench trial commenced on June 17, 2008. The State tried defendant jointly with Clarence Merritte, Paul Forbes, and Joy Forbes. The trial testimony was described in detail in our previous decisions in *People v. Merritte*, 2013 IL App (3d) 110640-U and *People v. Merritte*, 2016 IL App (3d) 140314-U. We adopt the accounts of the trial testimony in those cases and discuss here only the portions relevant to this appeal.

¶ 7 Randy Nelson, an Ottawa police officer, testified that on February 19, 2007, he was parked on the 1300 block of West Jackson Street. He observed a vehicle drive up to the Jackson Street house and stop in the road. One of the three occupants exited the vehicle and then entered the house. The individual then got back into the vehicle, and the vehicle drove away. Nelson followed the vehicle and observed it turn left without signaling and fail to stop at a stop sign. Nelson initiated a traffic stop.

¶ 8 Nelson spoke with the occupants of the vehicle and learned that Nicole Cisneros was the driver. Lindsay Lavalle and Michael Rodriguez were passengers. Nelson ran a "computer check" on all three occupants. Nelson learned that Cisneros' license was suspended, and he arrested her. Other officers arrived on the scene and searched the vehicle after the occupants had exited. They located a "tin" of heroin on the front driver's seat. Lavalle initially denied knowing about the heroin but later said it belonged to Cisneros. The officers transported all three occupants to the police station and interrogated each of them. They charged Lavalle and Rodriguez with possession of a controlled substance. The officers then transported Lavalle and Cisneros to the county jail to be strip searched. The officers later discovered that Cisneros had kicked a cigarette carton containing heroin under the driver's seat of the squad car when they transported her to the county jail.

¶ 9 Lavalle testified at trial that she had known defendant for approximately two years. Lavalle used heroin every day during that time until she was arrested in April 2007. Lavalle saw defendant approximately twice a week to obtain drugs. Lavalle would call defendant when she wanted drugs and then meet up with him or "[w]hoever was doin' it that day" at various locations. Defendant personally handed Lavalle drugs on approximately 20 occasions.

¶ 10 Lavalle worked for defendant for approximately two to three weeks in 2007. During that time, Lavalle held drugs, drove, and occasionally sold drugs for defendant. Defendant gave Lavalle drugs in exchange for holding drugs and driving for him.

¶ 11 On February 19, 2007, Lavalle and her boyfriend, Rodriguez, were passengers in a vehicle driven by Cisneros. They drove to a house on Jackson Street where someone named George lived. They intended to obtain drugs at the Jackson Street house. Lavalle stated that "[w]hoever was selling drugs that day" would tell them to go to the Jackson Street house. On prior occasions, defendant had personally told Lavalle she could go to the Jackson Street house to get drugs.

¶ 12 When they arrived at the house, Rodriguez went inside and retrieved the drugs. After they drove away, they were stopped by the police. Lavalle placed the drugs down her pants but dropped one packet. The police found the drugs Lavalle dropped and took Lavalle, Rodriguez, and Cisneros to the police station. While at the police station, Cisneros asked Lavalle for the drugs Lavalle still had in her possession. Lavalle gave the drugs to Cisneros. Later that night, Cisneros left the drugs in a squad car, where the police eventually found them.

¶ 13 Inspector Robert Nilles, testified that he executed a search warrant at the Jackson Street house on February 20, 2007. When Nilles and the other officers arrived, Jorge Hernandez, also known as "George," was at the residence. While the officers searched the residence, defendant,

Paul Forbes, Brittney Givens, Clarence Merritte, Joshua Glass, Michael Goldsmith, Gina Genseke, and Michael Thompson arrived at the residence. During the search, the officers located needles, a grinder with residue, several baggies of powder, and a scale. The officers also found "cut," which is a substance that is mixed with drugs to make the drugs less potent. The parties stipulated that laboratory tests revealed that the residue recovered from the grinder contained heroin.

¶ 14 Mary Beth Morelli testified that she lived on Chapel Street in Ottawa, Illinois. On March 24, 2007, she was in her house when she observed a man walking along the river bluff across the street from her house. She saw him stop near some trees, take something out of his pocket, drop it on the ground, and brush leaves over it with his feet. The man wore baggy black pants, a large white short-sleeve shirt, no coat, and a black baseball cap. The man then entered a vehicle and left. Someone else was driving the vehicle. Morelli and her husband went to the area where the man had been and found a plastic bag containing what appeared to be drugs. They took the bag to the police station. Morelli described the man and the vehicle she saw to an officer. The officer told Morelli to call the police station if the man returned. The vehicle Morelli had seen earlier eventually returned later that day. The same man exited the vehicle and began walking along the river bluff. Morelli called the police, and several squad cars arrived on the scene. Morelli testified that she knew the man's name was Michael Goldsmith.

¶ 15 Police Officer James Bell testified that he was on patrol on March 24, 2007. At approximately 1 p.m., Bell conducted a traffic stop on a vehicle driven by Ebony Freeman. Goldsmith was a passenger in the vehicle. He was wearing a black baseball cap and a white shirt. Bell did not issue a ticket or search the vehicle. Later that day, Bell met with Morelli in the lobby of the police station. Morelli brought plastic bags containing "purported heroin that was

packaged up for sale." One bag had 21 square tinfoil pieces and another plastic bag had 50 square tinfoil pieces.

¶ 16 Officer Nelson testified that on March 24, 2007, he was dispatched to the Chapel Street area. He made contact with Goldsmith and Freeman, who were walking near a grassy area by the river. Nelson spoke with Morelli, who indicated that she had seen one of the individuals earlier.

¶ 17 After the trial concluded, the trial court found defendant guilty of criminal drug conspiracy and four counts of unlawful possession of a controlled substance with intent to deliver. The trial court found defendant not guilty of possession of a controlled substance for the incident of February 20, 2007. The trial court reasoned that it would be "speculation" to say that defendant had touched the grinder containing heroin that the police recovered from the Jackson Street house.

¶ 18 The trial court sentenced defendant to 20 years' imprisonment for criminal drug conspiracy. The trial court did not impose sentences on the other counts, finding that they merged with the criminal drug conspiracy conviction. At the sentencing hearing, John Knepper, a correctional officer at the county jail, testified that he had a confrontation with defendant at the county jail while defendant was incarcerated there. After the encounter, Knepper noticed that he had a bite mark on his arm. Knepper did not feel defendant bite him but knew he did not have the bite mark before the encounter. The trial court noted that biting Knepper constituted aggravated battery since Knepper was a correctional officer. The trial court indicated that it considered Knepper's testimony regarding this incident in sentencing defendant.

¶ 19 On direct appeal, defendant argued that his four convictions for unlawful possession of a controlled substance must be vacated under one-act, one-crime principles. In a summary order,

we affirmed defendant's conviction and sentence. *People v. Merritte*, No. 3-08-0677 (2010). (unpublished order under Supreme Court Rule 23).

¶ 20 Defendant filed a *pro se* postconviction petition alleging that he received ineffective assistance of trial and appellate counsel. Specifically, defendant claimed that trial counsel failed to: (1) object to various inadmissible and prejudicial testimony; (2) file a motion to dismiss the indictment; and (3) object to John Knepper's victim impact statement. Defendant attached an incident report that contains Knepper's account of the incident at the county jail during which defendant allegedly bit Knepper. Defendant contended that the report contradicted the account of the incident given at sentencing. The trial court summarily dismissed defendant's petition. We affirmed the dismissal of the petition. *Merritte,* 2013 IL App (3d) 110640-U.

¶ 21 Defendant filed a motion for leave to file a successive postconviction petition, which set forth an actual innocence claim. Defendant claimed that the State relied on perjured testimony at trial. Defendant also claimed that his trial counsel provided ineffective assistance, and the counts on which the court found him guilty but imposed no sentence were void. Defendant attached affidavits from Aaron Flex, Paul Forbes, Clarence Merritte, Michael Goldsmith, and Joshua Glass. Defendant filed a supplement to his motion for leave to file a successive postconviction petition arguing that his trial counsel was ineffective on various grounds. The trial court denied both motions on July 12, 2013.

¶ 22 Defendant then filed more than 20 *pro se* pleadings, including multiple motions to reconsider the denial of his motion for leave to file a successive postconviction petition and a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)).

¶ 23 The trial court entered an order on April 4, 2014, which denied all of defendant's pending motions. The order also denied defendant's section 2-1401 petition with prejudice.

¶ 24 Upon denial of his motions, defendant filed an appeal challenging the trial court's denial of his motion for leave to file a successive postconviction petition. Defendant argued that his petition presented a colorable claim of actual innocence. Specifically, defendant claimed that the affidavits attached to his petition showed that key members of the conspiracy admitted defendant had no involvement in their own drug offenses that were alleged to have been made in furtherance of the conspiracy. We affirmed the trial court's denial of defendant's motion for leave to file a successive petition, finding that the new evidence presented by defendant was not of such a conclusive character that it would likely change the result on retrial. *Merritte*, 2016 IL App (3d) 140314-U, ¶ 51.

¶ 25 On April 24, 2015, while his appeal of the denial of his motion to file a successive postconviction petition was pending, defendant filed a new petition for relief from judgment under section 2-1401 of the Code, which is the subject of the instant appeal. The petition argued that defendant was entitled to a new trial based on newly discovered evidence. The petition contended that the following newly discovered evidence warranted a new trial: (1) a laboratory report and (2) a State's Attorney's statement of Nicole Cisneros. The petition also discussed the trial evidence and the affidavits defendant previously attached to his motion for leave to file a successive postconviction petition. The petition also argued that the matter should be remanded for resentencing because Knepper falsely testified at the sentencing hearing. Defendant attached as an exhibit the same incident report prepared by Knepper that he previously attached to his postconviction petition.

¶ 26 Defendant filed hundreds of pages of exhibits along with his section 2-1401 petition, most of which were transcript excerpts from the trial. Defendant included a document bearing the letterhead of the Illinois State Police which was entitled "Laboratory Report" and dated December 18, 2007. The document listed the offense as "Violation of Controlled Substances Act" and the suspect as Goldsmith. The document stated that the following exhibits were submitted to the Joliet forensic science laboratory on April 26, 2007: (1) "[o]ne plastic bag"; (2) "[o]ne sealed plastic bag alleged to contain six plastic bags (No examination conducted)"; and (3) "[t]hree fingerprint standards." Under a section titled "Examination and Results" the document stated, in its entirety: "Examination of Exhibit 1 [*i.e.*, the one plastic bag,] revealed no latent prints suitable for comparison." Under a section titled "Remarks," the document stated:

> "The evidence will be returned at the laboratory. Further examination has been deferred. Exhibits 2 and 3 [*i.e.*, the sealed plastic bag allegedly containing six plastic bags and the three fingerprint standards,] should be resubmitted in the event additional examination will significantly aid in this investigation. Proper handling procedures should be exercised to protect Exhibit 2 in the event that additional examination becomes necessary."

¶ 27 Defendant also attached as an exhibit a document entitled "Amended State's Attorney's Statement," which was dated May 25, 2007. The heading of the document indicated that the document was related to a La Salle County criminal case in which Cisneros was the defendant. The document stated that the court convicted Cisneros of unlawful possession of a controlled substance and sentenced her to 18 months' imprisonment. Regarding the "facts and circumstances" of the offense, the document stated as follows:

> "On February 19, 2007, an officer stopped a vehicle driven by [Cisneros] for failure to signal and disregarding a stop sign. [Cisneros] was taken to the jail to be searched twice, on the second trip the officer noticed that [Cisneros] was moving around. The officer then searched the vehicle after [Cisneros] exited the vehicle and located a cigarette package containing nineteen of purported heroin that field tested positive for heroin. [Cisneros] was then interviewed and admitted that the heroin was hers."

¶ 28 On May 18, 2015, defendant filed a "Supplemental Petition to Vacate Judgment Under Section 2-1401(f)" along with an affidavit in support of his petition. The supplemental petition argued that the trial court lacked jurisdiction to consider defendant's criminal information since the information did not contain an affidavit or certificate stating that the State's Attorney complied with Illinois Supreme Court Rule 12 (eff. Sept. 19, 2014). Defendant also filed a motion to proceed *in forma pauperis* and to appoint counsel.

¶ 29 On August 6, 2015, defendant filed a "Motion for Change of Venue or, Alternatively, Substitution of Judges with Conflicts." The motion argued that all the judges of the thirteenth judicial circuit were biased against defendant since defendant's "charges were extremely discussed and covered by media companies all throughout the nation and amongst politicians at the U.S. Pentagon in Washington, D.C." The motion contended that, as a result of this bias, a venue change was warranted. The motion further alleged that Judge Ryan had demonstrated bias against defendant in past proceedings. Specifically, the motion alleged that Judge Ryan purposefully erroneously advised defendant and his codefendants regarding the percentage of their sentences they would be required to serve if convicted, threatened to use *ex parte*

communications against defendant, gave unfavorable dispositions to defendant in prior collateral proceedings, and failed to enter timely rulings on defendant's pleadings. The motion stated that defendant had filed complaints with the judicial inquiry board against Judge Ryan and other judges. The motion requested that the matter be transferred to Cook County and that "all of the circuit court and associate judges recuse themselves from ruling on this pleading against their Chief Judge Ryan and other judges to remove the reasonable belief that prejudice [would] result under the applicable Illinois Supreme Court Rules." The motion was not verified by affidavit.

¶ 30 On September 4, 2015, Judge Ryan entered an order denying defendant's motion for change of venue or, alternatively, motion for substitution of judges with conflicts. Judge Ryan noted that defendant previously filed a motion for substitution, which the trial court had denied, and defendant stated nothing new to warrant a hearing on the motion.

¶ 31 Judge Ryan also denied defendant's section 2-1401 petition, finding that the allegations in the petition did not provide a legal basis for relief under section 2-1401. The judge noted that the section 2-1401 petition raised many of the same issues of fact as defendant's prior section 2-1401 petition. The judge reasoned that the new matters raised in the section 2-1401 petition—namely, the laboratory report and the State's Attorney's statement—could have been raised in defendant's prior petition, as those documents were in existence at that time.

¶ 32 ANALYSIS

¶ 33 I. Jurisdiction

¶ 34 We first address defendant's argument that the trial court lacked jurisdiction throughout the criminal proceedings. Defendant contends: "Judge Ryan's judgments and orders throughout this entire case is [*sic*] void because he lacked the authority and subject matter jurisdiction to enter every judgment and order in this case." Specifically, defendant argues that the trial court

lacked subject matter jurisdiction since the prosecutors failed to comply with Illinois Supreme Court Rule 12 (eff. Sept. 19, 2014) when they initiated the prosecution.

¶ 35 " 'Jurisdiction is a fundamental prerequisite to a valid prosecution and conviction. Where jurisdiction is lacking, any resulting judgment rendered is void and may be attacked either directly or indirectly at any time.' " *People v. Castleberry*, 2015 IL 116916, ¶ 11 (quoting *People v. Davis*, 156 Ill. 2d 149, 155 (1993)). Jurisdiction consists of two elements: personal jurisdiction and subject matter jurisdiction. *Id.* ¶ 12.

¶ 36 In the instant case, the trial court had both personal jurisdiction and subject matter jurisdiction. The trial court acquired personal jurisdiction over defendant when defendant appeared before the court. *People v. Speed*, 318 Ill. App. 3d 910, 915 (2001) ("A criminal defendant confers personal jurisdiction on the trial court when he appears personally before it."). The Illinois Constitution confers subject matter jurisdiction over all justiciable matters upon circuit courts. Ill. Const. 1970, art. VI, § 9; see also *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002) The trial court had subject matter jurisdiction in this case, as a criminal prosecution for criminal drug conspiracy and possession of a controlled substance with intent to deliver presents a justiciable matter.

¶ 37 As the subject matter jurisdiction of the trial court is conferred by the Illinois Constitution, the State's alleged failure to comply with the service requirements of Rule 12 could not have deprived the trial court of jurisdiction. See *Babcock v. Wallace*, 2012 IL App (1st) 111090, ¶ 12 ("[I]f a tribunal has properly gained jurisdiction over a matter, then the failure of the parties or the tribunal itself to comply with a supreme court rule does not automatically divest it of jurisdiction.").

¶ 38 II. Motion to Substitute Judge

¶ 39 We next address defendant's argument that Judge Ryan did not have authority to rule on his section 2-1401 petition due to the fact that defendant named Judge Ryan in his "Motion for Change of Venue, or Alternatively, Substitution of Judges with Conflicts" filed August 6, 2015. Again, defendant's motion asserted not only that Judge Ryan was biased, but all the judges of the thirteenth judicial circuit were biased against defendant.

¶ 40 The procedure for substitution of judge in civil proceedings is governed by section 2-1001 of the Code (735 ILCS 5/2-1001 (West 2014)). Section 2-1001 provides procedures for substitution of judge as of right or for cause. 735 ILCS 5/2-1001(a)(2), (3) (West 2014). Defendant does not cite section 2-1001 of the Code in his motion for substitution or on appeal, and it is unclear whether he intends his substitution motion to be for cause or as of right. We find that it fails under either characterization.

¶ 41 Under section 2-1001(a)(2) of the Code, a party in a civil action may move for a substitution of judge as of right before the judge has ruled on any substantial issue in the case or by consent of the parties. 735 ILCS 5/2-1001(a)(2) (West 2014). "[A]ny orders entered by a court following an improper denial of a motion for substitution of judge are void." *Schnepf v. Schnepf*, 2013 IL App (4th) 121142, ¶ 24. A criminal defendant is not entitled to a substitution of judge as of right pursuant to section 2-1001(a)(2) of the Code (735 ILCS 5/2-1001(a)(2) (West 2014)) in proceedings under section 2-1401 of the Code. *Niemerg v. Bonelli*, 344 Ill. App. 3d 459, 464-65 (2003). Therefore, defendant was not entitled to substitute Judge Ryan as of right under section 2-1001(a)(2).

¶ 42 A party may also petition for a substitution of judge for cause under section 2-1001(a)(3) of the Code (735 ILCS 5/2-1001(a)(3) (West 2014)). If a proper petition is filed, a hearing to determine whether cause exists is to be held by a judge other than the one named in the petition.

735 ILCS 5/2-1001(a)(3)(iii) (West 2014). The right to have a petition for substitution of judge for cause heard before a different judge is not automatic:

> "In order to trigger the right to a hearing before another judge on the question of whether substitution for cause is warranted in a civil case pursuant to section 2-1001(a)(3), the request must be made by petition, the petition must set forth the specific cause for substitution, and the petition must be verified by affidavit." *In re Estate of Wilson*, 238 Ill. 2d 519, 553-54 (2010) (citing 735 ILCS 5/2-1001(a)(3)(ii) (West 2006)).

¶ 43 We find that Judge Ryan did not err in denying the motion to substitute judge and ruling on the section 2-1401 petition. The substitution request was in the form of a motion rather than a petition and was not verified by affidavit, as required by statute. See 735 ILCS 5/2-1001(a)(3)(ii) (West 2014). Therefore, the motion did not "trigger the right to a hearing before another judge." *Wilson*, 238 Ill. 2d at 553. As we have found that two of the threshold requirements were not met, we need not address whether the petition adequately alleged cause for substitution.

¶ 44 III. New Trial Based on Newly Discovered Evidence

¶ 45 Defendant next argues that the trial court erred in denying his section 2-1401 petition because his petition set forth a meritorious claim that he was entitled to a new trial based on newly discovered evidence. Specifically, defendant argues that a new trial is warranted based on: (1) a laboratory report listing Goldsmith as the suspect; and (2) an "Amended State's Attorney's Statement" for a criminal case in which the court convicted Cisneros of unlawful possession of a controlled substance.

¶ 46 A section 2-1401 petition is the forum for correcting factual errors in a criminal prosecution which were unknown to the petitioner and trial court at the time of judgment and would have prevented entry of judgment if they had been known. *People v. Haynes*, 192 Ill. 2d 437, 461 (2000). Here, defendant's section 2-1401 petition argued that defendant was entitled to a new trial based on newly discovered evidence.

> "In order to be entitled to relief under section 2-1401, the newly discovered evidence must be (1) so conclusive that it would probably change the result if a new trial is granted; (2) discovered after the trial; (3) of such character that it could not have been discovered prior to trial in the exercise of due diligence; (4) material to the issues; and (5) not merely cumulative to the trial evidence." *People v. Hallom*, 265 Ill. App. 3d 896, 906 (1994).

¶ 47 We find that defendant's petition failed to set forth a meritorious claim for a new trial based on newly discovered evidence. Initially, we note that both the statement of Cisneros and the laboratory report upon which defendant bases his claim for a new trial were generated in 2007. As such, these documents were likely not "of such character that [they] could not have been discovered prior to trial in the exercise of due diligence." *Id*. Even if we were to accept that the two documents could not have been discovered prior to trial, they are not "so conclusive that [they] would probably change the result if a new trial is granted." *Id.*

¶ 48 We first examine the State's Attorney's statement of Cisneros. Defendant argues that Cisneros admitted in the statement that the heroin recovered on February 19, 2007, belonged to her. On this basis, defendant contends that the statement exonerates him. Defendant argues:

> "Conclusively, the evidence of Cisneros' confession that exonerates or exculpates [defendant] and alleged co-defendants, with reasonable probability, would probably change the result on retrial because if it is accepted by the trier of fact, it could convince the trier of fact to reject Lavalle's uncorroborated *** accounts and lead them to conclude that police and prosecutors knew that [defendant] was not involved in the February 19, 2007 incident but they refused to call the only person actually convicted for the incident to suppress the exculpatory value of the true evidence."

¶ 49 The State's theory at trial was that defendant and his coconspirators conducted drug distribution operations from the Jackson Street house, as well as other locations. The charge of criminal drug conspiracy in this case was based on multiple occurrences at different locations on various days. Defendant was not charged, either as part of the criminal drug conspiracy or as a separate offense, with possession of the specific heroin recovered from Lavalle and Cisneros on February 19, 2007. Additionally, the admission in Cisneros's statement that she possessed the drugs recovered on February 19 does not contradict Lavalle's trial testimony. Specifically, Lavalle testified that on February 19, 2007, she went to the Jackson Street house with Cisneros and Rodriguez and obtained drugs there. Thus, we find that Cisneros' admission that she possessed the drugs found in the police car on February 19 would not have affected the outcome of the trial.

¶ 50 We next turn to the laboratory report. Defendant contends that the laboratory report contains "information proving that Goldsmith could not have possibly been the 'blackmale' [*sic*] Morelli was manipulated to claim was Goldsmith by overzealous police officer Bell because

prosecutors own forensic experts found that 3 separate fingerprints found on the seized heroin packaging did not match Goldsmith's fingerprints." Defendant either misunderstands or misrepresents the contents of the laboratory report. The laboratory report states that three exhibits were submitted: (1) a plastic bag; (2) a sealed plastic bag alleged to contain six plastic bags; and (3) three fingerprint standards. The report indicates that crime laboratory personnel only examined one of these items (the first plastic bag). The examination "revealed no latent prints suitable for comparison." The report indicated that further examination of the items had been deferred. The report would have had no effect on the outcome of trial as it neither proved nor disproved that Goldsmith touched or possessed the bag that was tested.

¶ 51 Defendant makes additional claims that the trial evidence was insufficient on various points. Defendant's claims challenging the sufficiency of the trial evidence are barred by the doctrine of *res judicata,* as they could have been raised on direct appeal. *In re Marriage of Baumgartner*, 226 Ill. App. 3d 790, 794 (1992). Defendant also contends that certain affidavits which he previously submitted as exhibits to his motion for leave to file a successive postconviction petition call certain trial evidence into doubt. We previously held that these affidavits were not of such a conclusive character that they would likely change the outcome of the proceedings. *Merritte*, 2016 IL App (3d) 140314-U, ¶ 51.

¶ 52 IV. New Sentencing Hearing

¶ 53 Defendant also argues that he is entitled to "further 2-1401 proceedings or a new sentencing hearing" since the prosecutors knew or reasonably should have known that Knepper's testimony at the sentencing hearing was false. Defendant alleged that the State suppressed and destroyed evidence, including a video recording, that would have shown defendant never bit Knepper. Defendant, however, failed to present any evidence showing such a video ever existed.

Instead, defendant attached the same incident report to his section 2-1401 petition that he previously attached to his postconviction petition. Simply put, defendant's petition is devoid of any "new evidence" that Knepper's testimony regarding the biting incident was false. Thus, defendant's claim is barred by the doctrine of *res judicata*. See *Haynes*, 192 Ill. 2d at 461.

¶ 54 V. Motions

¶ 55 Finally, we note that defendant filed two motions after the briefing in this case was complete: (1) a motion for leave to file another reply brief; and (2) a motion for remand or, alternatively, to supplement the record. We deny defendant's motion for leave to file another reply brief. Appellants are not permitted to file multiple reply briefs. See Ill. S. C. R. 341 (eff. Jan. 1, 2016).

¶ 56 We also deny defendant's motion for remand or, alternatively, to supplement the record. Defendant argued that the matter should be remanded for resentencing or, alternatively, he should be permitted to supplement the record with additional documentation regarding the incident in which he allegedly bit Knepper. We refuse to consider the additional documentation submitted by defendant, as it is not part of the trial record in this case. *People ex rel. Coats v. Sain*, 24 Ill. 2d 248, 250 (1962) ("It is fundamental that, on appeal, a reviewing court is restricted to the record of the trial court.").

¶ 57 CONCLUSION

¶ 58 For the foregoing reasons, we affirm the judgment of the circuit court of La Salle County.

¶ 59 Affirmed.