2017 IL App (1st) 141758-U
No. 1-14-1758

FIFTH DIVISION
May 26, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court
Plaintiff-Appellee,	)	of Cook County.
	)	
v.	)	No. 97 CR 12134
	)	
NATHAN ANTOINE,	)	The Honorable
	)	Colleen Ann Hyland,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶1 HELD: Defendant failed to establish his requested testing and retesting of forensic evidence would product "new, noncumulative evidence materially relevant" to his claim of actual innocence as required by section 116-3 of the Code of Criminal Procedure (725 ILCS 5/116-3 (West 2002)).

¶2 This case appears before us for a fourth time. Defendant, Nathan Antoine, who was convicted of two counts of aggravated criminal sexual assault and sentenced to two consecutive 60-year prison terms, contends the trial court erred in denying his newest motion for DNA

testing pursuant to section 116-3 of the Code of Criminal Procedure (Code) (725 ILCS 5/116-3 (West 2002)). Based on the following, we affirm.

¶3 FACTS

¶4 On direct appeal, our opinion detailed the following relevant facts:

> "At trial the jury heard the following evidence.
>
> On March 15, 1997 around midnight, Rose B. stopped at a Jewel on her way home from work. When she returned to her car, she noticed a dark car parked nearby with a man sitting in it. After placing her groceries in her car, she drove away.
>
> While on the road, she realized she had a flat tire. She pulled over to check the tire and opened her trunk. A man she later identified as Antoine pulled alongside her car and offered assistance. A special lug wrench was needed to change her tire, which was not in her trunk. Antoine then offered her a ride back to the Jewel so she could call a friend; she accepted.
>
> Antoine drove to an alley and stopped the car. He unzipped his pants, forced her head down, and said 'suck it or I'll cut you.' She begged Antoine not to force her and told him she was 72 years old. She then noticed she was cut over her right eye and was bleeding. She wiped the blood onto Antoine's pants. After [an] unsuccessful attempt at anal sex, Antoine again pushed Rose B.'s head into his lap and ordered her to perform oral sex on him. She did, and he quickly ejaculated. Antoine then drove down the alley ordering her to keep her head down. After about 15 minutes, he stopped his car and told her to get out. He

threatened to shoot her if she looked at him. He did not allow her to take her purse. After she got out of the car, Antoine drove away.

Rose B. went to a nearby home. The homeowner called the police, and Officer Brian Duffy responded to the call. The paramedics arrived and took her to the hospital.

She was treated with a sex assault kit. The treating nurse collected her pantyhose and took oral and rectal swabs.

While at the hospital, Rose B. told Duffy what happened. Her car was recovered, and the evidence technician David Winston searched for latent prints. He located fingerprints on various parts of the car. He photographed and lifted prints. He also found her flat tire had a puncture-hole on the side.
Officer Stanley McCadlow, an expert in latent print identification and comparisons, made a tentative, but not complete, identification that the latent impression belonged to Antoine. Detective William Villanova obtained an arrest warrant and search warrant for Antoine's home.

On March 19, 1997, police officers arrested Antoine. He was placed in a lineup. Rose B. viewed the lineup and immediately identified Antoine as the perpetrator.

Antoine's car was confiscated and taken to the police station. The front seats were removed and sent, along with the sex assault kit, to the Illinois State Police Crime Lab in Joliet. The pantyhose and oral swab tested positive for semen. The front passenger seat of Antoine's car tested positive for the presence of blood. Blood samples were taken from Antoine and Rose B.

> The semen stains from the oral swab could not be tested because of insufficient material. But the semen stains from Rose B.'s pantyhose were tested. The DNA profile from these stains matched Antoine's DNA profile. The blood stains taken from the seat of Antoine's car were tested and matched Rose B.'s blood.
>
> Forensic Scientist Thomas Skinner compared nine suitable latent prints taken from Rose B.'s car. He determined all of the lifts were prints made by Antoine." *People v. Antoine*, 335 Ill. App. 3d 562, 565-66 (2002).

We affirmed defendant's conviction and sentence on direct appeal. *Id*.

¶5 Following his trial and direct appeal, defendant appeared *pro se* and filed a litany of postconviction pleadings. Within those pleadings, defendant filed an initial section 116-3 motion in conjunction with a petition for postconviction relief. Defendant later filed an amended section 116-3 motion requesting the retesting of various pieces of forensic evidence collected from the crime, namely, two semen stains on the victim's pantyhose, an oral swab containing semen from the victim, and the offender's pubic hair recovered from the sexual assault kit. At the time of trial, the two semen stains on the pantyhose were tested using the restriction fragment length polymorphism (RFLP) method, but the oral swab and pubic hair were not tested. The trial court denied defendant's motion, finding that the appropriate testing was completed at the time of trial and that defendant failed to meet his burden of establishing the materiality and non-cumulative nature of the requested tests.

¶6 On appeal, defendant argued that the requested retesting would reveal the identity of the true offender and, thus, further his actual innocence claim. Following our review, we affirmed the denial of defendant's section 116-3 motion. With regard to the oral swab and the pubic hair,

we found that defendant failed to establish the requisite *prima facie* case demonstrating a chain of custody for the evidence. *People v. Antoine*, 2013 IL App (1st) 093141-U, ¶ 12. With regard to the semen stains on the victim's pantyhose, we found defendant did establish a *prima facie* case for testing; however, defendant failed to demonstrate that the result of retesting had the potential to produce new, noncumulative evidence materially relevant to his actual innocence claim. *Id*. ¶¶ 13, 15. Instead, we concluded that, "considering the strength of the matches between the semen samples on the victim's pantyhose and defendant's DNA profile in conjunction with the victim's blood having been found on the front passenger seat of defendant's car, defendant's eight[1] fingerprints having been found on the victim's car, and the victim's positive identification of defendant in a police lineup within four days of the offense," the retesting of the pantyhose using the requested mitochondrial DNA procedure would not produce new, noncumulative results to support defendant's claim of actual innocence. *Id*. ¶ 16.

¶7 On March 11, 2014, defendant filed another section 116-3 motion for forensic testing, the subject of which underlies the instant appeal. In the 2014 motion, defendant requested: (1) that all unidentified fingerprints be run through both the FBI's and the Illinois State Police's fingerprint databases; and (2) that DNA testing be performed on all evidence recovered from the victim's sexual assault kit and on the blood evidence obtained from defendant's vehicle. More specifically, defendant requested mitochondrial and Y-STR DNA testing on the pubic hair, the bloods stains, and the semen on the victim's pantyhose and Y-STR DNA testing on the victim's oral swabs containing semen. In his motion, defendant alleged that the fingerprint evidence had been previously tested, but the fingerprints should be subject to new testing that was not scientifically available at the time of trial providing a reasonable likelihood of more probative

[1] According to the record, nine fingerprints taken from the victim's car were positively identified as belonging to defendant.

results. Defendant additionally alleged the pubic hair and oral swabs were not previously tested, but were subject to a proper chain of custody, and newer, more accurate testing would produce new, non-cumulative evidence materially relevant to his actual innocence claim. Defendant further alleged retesting of the blood stains and semen stains on the pantyhose, which were subject to proper chains of custody, with methods not available at the time of trial had the potential to exclude him as the source of the DNA, which would be new, non-cumulative evidence materially relevant to his actual innocence claim.

¶8 The State filed a motion to dismiss defendant's motion, arguing that sufficient DNA testing was completed on the forensic evidence at the time of trial. The State maintained that defendant could not satisfy the requirements for retesting under the statute where, in order to do so, the material evidence demonstrating his guilt, namely, the DNA profile matching that of defendant produced from the semen stains on the victim's pantyhose, the DNA profile matching the victim produced from the blood stains in defendant's car, the fingerprints matching defendant lifted from the victim's car, and the victim's positive identification, would need to be erroneous.

¶9 On May 16, 2014, in a written order, the trial court denied defendant's section 116-3 motion, finding the motion did not meet the requisite statutory criteria for defendant's request. This appeal followed.

¶10 ANALYSIS

¶11 Defendant contends he satisfied the requisite statutory requirements for his section 116-3 motion and his request for forensic testing should be granted because "additional or new testing could result in a non-match, which would significantly advance his claim of innocence." Defendant specifically requested testing of the oral swab obtained from the victim and the pubic hair of the offender and retesting of the semen stains found in the victim's pantyhose and the

blood stains from his vehicle using mitochondrial testing, Y-STR testing, and new testing kits such as the PowerPlex 16 and Identifiler PCR Amplification kits.

¶12 The purpose of section 116-3 of the Code "is to provide an avenue for convicted defendants who maintained their innocence to test *** genetic material capable of providing new and dramatic evidence materially relevant to the question of the defendant's actual innocence." *People v. Henderson*, 343 Ill. App. 3d 1108, 1114 (2003). Section 116-3 provides:

> "(a) A defendant may make a motion before the trial court that entered the judgment on the conviction in his or her case for the performance of fingerprint or forensic DNA testing, including comparison analysis of genetic marker groupings of the evidence collected by criminal justice agencies pursuant to the alleged offense, to those of the defendant, to those of other forensic evidence, and to those maintained under subsection (f) of Section 5-4-3 of the Unified Code of Corrections [730 ILCS 5/5-4-3], on evidence that was secured in relation to the trial which resulted in his or her conviction, but which was not subject to the testing which is now requested because the technology for the testing was not available at the time of trial. Reasonable notice shall be served upon the State.
>
> (b) The defendant must present a *prima facie* case that:
>
> (1) identity was at issue in the trial which resulted in his or her conviction; and
>
> (2) the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect.

(c) The trial court shall allow the testing under reasonable conditions designed to protect the State's interests in the integrity of the evidence and the testing process upon a determination that:

(1) the result of the testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence even though the results may not completely exonerate the defendant;

(2) the testing requested employs a scientific method generally accepted within the relevant scientific community." 725 ILCS 5/116-3 (West 2002).

¶13 In this case, our analysis begins and ends with a determination of whether the evidence defendant seeks to test or retest is "materially relevant" as that question is dispositive of defendant's fourth appearance before this court. Evidence that is "materially relevant" is evidence that tends to "significantly advance" the actual innocence claim, but need not be enough, standing alone, to exonerate the defendant. *People v. Savory*, 197 Ill. 2d 203, 213-14 (2000). To determine whether the forensic evidence in question is "materially relevant" to the defendant's actual innocence claim, a court must evaluate the evidence introduced at trial, as well as the evidence the defendant seeks to retest. *Id*. at 214. We review *de novo* a trial court's ruling on a section 116-3 motion. *People v. Moore*, 377 Ill. App. 3d 294, 298 (2007).

¶14 Defendant argues that "the semen stains on the complainant's pantyhose, semen present in an oral swab from the complainant, the offender's pubic hair recovered for the sexual assault kit, and the bloodstains from Antoine's vehicle could all be subject to newer, more advanced testing that has the potential to exclude Antoine as a contributor."[2] According to defendant, if he

[2] We note that, on appeal, defendant has abandoned his request for additional fingerprint testing.

was eliminated as the source of "at least of one piece of evidence, the value of those other pieces of evidence would fade."

¶15 Based on our review of the trial evidence as well as the evidence defendant seeks to test or retest, we conclude that testing the oral swab obtained from the victim and the pubic hair of the offender and retesting the semen stains from the victim's pantyhose and the blood samples from defendant's vehicle would not produce new, noncumulative evidence materially relevant to his actual innocence claim.

¶16 The RFLP test performed on the semen stains from the victim's pantyhose produced results matching defendant's DNA profile, such that a match would be expected to occur in approximately 1 in 556 million Blacks, 1 in 203 million Caucasions, or 1 in 105 million Hispanics for one of the samples and approximately 1 in 200 million Blacks, 1 in 160 million Caucasions, and 1 in 100 million Hispanics in the second sample. Although newer testing has become available since the time of defendant's trial, defendant cannot invalidate the strength of the match between his DNA profile and that of the semen stains found on the victim's pantyhose. Rather, without demonstrating some inaccuracy in the original testing, the results of additional testing should be the same even if the methods have become more precise. See *People v. Stoecker*, 2014 IL 115756, ¶ 35

¶17 With regard to the blood stains found in defendant's vehicle, the evidence was tested using the polymerase chain reaction (PCR) to develop a DNA profile. The victim's blood matched the DNA profile generated from the blood sample on nine loci. Relying on *People v. Wright*, 2012 IL App (1st) 073106, defendant insists a "match" on nine loci is no match at all. Defendant, however, misstates the holding of *Wright*, in which the court was "not asked to determine whether the expert's conclusion of a 'match' based on only nine-loci was correct." *Id*.

¶ 86. Instead, the *Wright* holding was limited to determining that the lower court abused its discretion in denying the defense the ability to investigate and impeach the expert's conclusion where the nine-loci "match" was the only identification evidence presented against the defendant in a cold-case where the victim could not identify her attacker. *Id*. ¶¶ 81, 86. Contrary to defendant's position, case law does not provide that a nine loci match fails to constitute a match. See, *e.g.*, *People v. Banks*, 2016 IL 131009; *People v. Fountain*, 2016 IL App (1st) 131474; *People v. Crawford*, 2013 IL App (1st) 100310. Notwithstanding, the facts of this case are distinguishable from *Wright* for a number of reasons--most notably due to the vast evidence supporting defendant's guilt, which included defendant's semen stains on the victim's pantyhose, the nine fingerprints belonging to defendant that were found on the victim's vehicle, and the victim's positive identification of defendant as her attacker. Accordingly, we find that retesting the blood stains using new testing kits will not produce new, non-cumulative evidence that would significantly advance defendant's actual innocence claim.

¶18 Finally, even if the oral swab and the pubic hair, which were not tested at the time of trial, produced a "non-match," in that defendant's DNA was not linked to the two pieces of evidence, the remaining evidence supporting the jury's verdict does not simply fade, as argued by defendant. In fact, our courts have repeatedly stated that a victim's positive identification, such as the one in this case, is sufficient to support a jury's verdict if the identification is positive and the witness is credible. See *People v. Henderson*, 36 Ill. App. 3d 355, 365 (1976). That said, the evidence admitted at trial also included the semen stains from the victim's pantyhose matching defendant's DNA profile within a very limited probability, the blood stains from defendant's car matching the victim's DNA profile on a sufficient basis, and also defendant's nine fingerprints obtained from the victim's vehicle. *Cf. People v. Price*, 345 Ill. App. 3d 129,

140-41 (2003) (finding that testing of DNA not submitted at trial would significantly advance the defendant's claim of innocence where the only evidence to support the criminal sexual assaults was witness testimony).

¶19 Ultimately, we conclude that a favorable result from the testing or retesting of any of the pieces of evidence would not "significantly advance" defendant's actual innocence claim where the remaining pieces of evidence overwhelmingly support the jury's verdict. The requested testing and retesting is incapable of producing dramatic evidence of innocence in light of all of the evidence presented at trial. See *People v. Urioste*, 316 Ill. App. 3d 307, 317-18 (2000); *Stoecker*, 2014 IL 115756, ¶¶ 34-35. We, therefore, find the trial court did not err in denying defendant's section 116-3 motion.

¶20 CONCLUSION

¶21 We affirm the trial court's denial of defendant's section 116-3 motion for testing and retesting of forensic evidence.

¶22 Affirmed.