

2017 IL App (1st) 151889-U

No. 1-15-1889

Order filed December 1, 2017

Fifth Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 95 CR 34263
)	
GLEN WILLIAMS,)	Honorable
)	Paula M. Daleo,
Defendant-Appellant.)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* The denial of the defendant's postconviction petition following a third-stage evidentiary hearing was not manifestly erroneous.

¶ 2 The defendant, Glen Williams, appeals from an order of the circuit court of Cook County denying his petition for postconviction relief following an evidentiary hearing. This is the defendant's third appeal stemming from his conviction for the 1995 murder of Jason Johnson. In this appeal, the defendant contends that the circuit court erred in denying his petition. He

maintains that the evidence presented at the evidentiary hearing established that his conviction and the denial of his pretrial motions to quash arrest and suppress statements and evidence were the result of perjured testimony, entitling him to a new trial and new hearings on his pretrial motions.

¶ 3

BACKGROUND

¶ 4

I. Facts

¶ 5 On August 28, 1995, the body of Jason Johnson was found in an alley in Village of Bellwood, Cook County, Illinois. The defendant was initially questioned on August 29, 1995, by Bellwood detectives. After the defendant relocated to Houston, Texas, the Bellwood detectives, Luis Disotuar and Randy Leslie, traveled to Houston to interview him again. After being questioned by the detectives and taking a polygraph test, the defendant signed a statement admitting to shooting Mr. Johnson.

¶ 6 Pertinent to the issues on appeal are the testimony of Detective Disotuar,¹ who testified at the hearings on the defendant's pretrial motions and at the defendant's murder trial, and the testimony of Kenyetta Barlow who testified at the defendant's trial.

¶ 7

II. Trial Court Proceedings

¶ 8

A. Hearings on Pretrial Motions

¶ 9 Separate hearings were held on the defendant's motion to quash arrest and suppress evidence and motion to suppress statements.

¶ 10

1. *Motion to Quash Arrest and Suppress Evidence*

¹ While Mr. Disotuar was no longer a police officer at the time of the evidentiary hearing, in the interests of consistency, he will be referred to as Detective Disotuar.

¶ 11 The defendant testified as follows. On November 7, 1995, he was living in Houston. At approximately 7 a.m., he was driving to work when his car was stopped by Detective Disotuar and a Houston police officer. The detective instructed the defendant to drive to the Houston police station where he was fingerprinted and placed in a locked room. The defendant continually asked if he was under arrest, made multiple requests to call his family to obtain an attorney but was told by Detective Disotuar and Detective Leslie not to worry about it. The defendant denied being advised of his rights and maintained that he did not feel free to leave.

¶ 12 After the defendant took the polygraph test, Detective Disotuar told him that if he signed the statement admitting he shot Mr. Johnson, he would not be charged or would be given probation; if he did not sign, he would be convicted of first degree murder. The defendant signed the statement admitting to shooting Mr. Johnson and placed his initials in various places as directed by the detectives. Though the statement bore the date of November 7, 1995, the defendant claimed that he did not sign the statement until November 8, 1995.

¶ 13 Detective Disotuar testified for the State as follows. The detective disputed the defendant's testimony concerning the circumstances of the defendant's questioning. The detective acknowledged that the defendant was fingerprinted upon his arrival at the Houston police station and that he was placed in a room with the door closed but not locked. According to the detective, the defendant was advised of his *Miranda* rights, which he waived by initialing and signing the form. During all of the questioning, the defendant answered the detectives' questions. The defendant never asked for an attorney or to make a telephone call, and he never asked the detectives why he was at the Houston police station. The defendant was not handcuffed, and

Detective Disotuar considered that the defendant was free to leave. The defendant agreed to take the polygraph test.

¶ 14 The trial court denied the motion to quash arrest and suppress evidence. The court noted the defendant's own testimony that he had cooperated with the police. It pointed out that the defendant signed the waiver of rights and the polygraph test consent form. While the defendant testified that he did not feel free to leave, he did not testify that he made a request to leave that was denied.

2. Motion to Suppress Statements

¶ 15 Detective Disotuar testified as follows. The detective denied leaving the defendant alone with the Houston police officers after the polygraph test and denied that the defendant had been beaten by the Houston officers. After the polygraph test, the defendant was questioned and agreed to give a statement. Detective Disotuar denied making any promises to the defendant if he signed a statement. The defendant requested that his oral statement be witnessed by Houston police officers. Detective Leslie wrote out the statement as the defendant narrated it. The statement was given to the defendant who read it out loud. Detective Leslie made the corrections requested by the defendant and the defendant initialed them. The defendant agreed with the contents of the statement and signed it. At the defendant's request, the detectives and the defendant went to a local cafeteria-style restaurant for barbeque. The detectives and the defendant went inside, ordered their food and took it back to the police station.

¶ 16 Detective Disotuar's testimony was confirmed by that of Houston police officer Paul Motard. In addition, Sergeant Motard denied using any verbal threats or physical force on the defendant to coerce him to give an inculpatory statement. He did not witness any other police

officer use or try to use physical force on the defendant. Sergeant Motard denied hearing either Detective Disotuar or Detective Leslie make promises to the defendant in order to obtain a confession from him to Mr. Johnson's murder.

¶ 17 Terry Ross, a Houston police officer, testified as follows. He witnessed the defendant sign the polygraph test consent form. Sergeant Ross explained that he mistakenly crossed out both recording choices and then hand wrote "will not." Sergeant Ross explained that, even if requested, recordings of criminal polygraph tests were not permitted. The defendant never asked for an attorney. Sergeant Ross denied threatening the defendant verbally and denied that other Houston police officers beat the defendant.

¶ 18 The defendant testified as follows. The defendant denied agreeing to take a polygraph test but acknowledged that he signed the consent form. Although he indicated on the consent form he wanted the test recorded, Sergeant Ross crossed it out. After the test, Sergeant Ross told the defendant that he failed the test, and he might as well confess. When the defendant continued to deny his involvement, Sergeant Ross left the room but returned with Houston police officers, C. E. Elliot and Motard. Sergeant Ross threatened defendant telling him that no one would ever see him again, and the Bellwood detectives could just say that they never located him. The defendant maintained that he was then struck by a telephone book and beaten with a fire hose. While the Bellwood detectives witnessed the defendant being struck by the telephone book, they did not take part in physically assaulting him. As a result of the beating, the left side of the defendant's mouth was swollen.

¶ 19 Just before the polygraph test, the defendant was shown a preprinted statement in which he admitted shooting Mr. Johnson, but he refused to sign it. After the test, Detective Disotuar

told the defendant that if he agreed to give a statement admitting shooting Mr. Johnson, he would get off on second degree manslaughter and could go home. The defendant signed the second statement because he felt he had no other choice. The defendant acknowledged that when he appeared before a Texas magistrate on November 8, 1995, he did not complain that he had been forced to sign the statement.

¶ 20 C. E. Elliot, a Houston police officer, testified in rebuttal as follows. There were no fire hoses in the room where the defendant stated the beating took place. Sergeant Elliot never verbally threatened the defendant and denied grabbing the defendant by his throat. Sergeant Elliot did not witness another Houston police officer strike or beat the defendant. He did not observe any injuries to the defendant's mouth, and the defendant never requested medical treatment.

¶ 21 The trial court denied the defendant's motion to suppress statements. Considering all of the evidence, the court found that the defendant agreed to accompany the detectives to the Houston police station, signed a waiver of his rights, and then signed a statement admitting to the shooting of Mr. Johnson. The court noted that there was evidence in the form of receipts that the defendant was provided with lunch and dinner. The court found it unlikely that the detectives would have taken a defendant with a badly swollen mouth out to a restaurant for dinner, or that the defendant could have eaten barbeque after such an injury. The court determined that learning that he had failed the polygraph test provided an intervening event that could have caused the defendant to voluntarily change his position that he had nothing to do with Mr. Johnson's murder.

¶ 22

B. Jury Trial

¶ 23 At the defendant's jury trial for the murder of Mr. Johnson, Kenyetta Barlow testified for the State as follows.

¶ 24 Mr. Barlow and the defendant were neighborhood friends. Between August 13 and 19, 1995, the defendant and Mr. Barlow were in the defendant's car talking and listening to music with lyrics referring to killings. The defendant asked if Mr. Barlow knew where the defendant could find a gun and how would Mr. Barlow feel if he (Mr. Barlow) killed someone. Mr. Barlow did not say anything; he just "shook it off."

¶ 25 Detective Disotuar's testimony at the defendant's trial was substantially the same as his testimony at the pretrial hearings. The defendant chose not to testify.

¶ 26 The jury found the defendant guilty of the first degree murder of Mr. Johnson, and he was sentenced to 50 years' imprisonment.

¶ 27 **III. Defendant's Direct Appeal**

¶ 28 On direct appeal, the defendant contended that the denial of his motions to quash arrest, suppress evidence and to suppress statements was error. In affirming the defendant's conviction and sentence, this court rejected the defendant's contention that his testimony should be believed over that of Detective Disotuar's testimony, finding that the defendant's testimony was substantially contradicted by the testimony and the evidence presented at the hearings. This court determined there was no basis for usurping the trial court's credibility determinations. *People v. Williams*, No. 1-98-1961 (2001) (unpublished order under Supreme Court Rule 23) (*Williams I*).

¶ 29 **IV. Postconviction Proceedings**

¶ 30 In his postconviction petition, the defendant alleged that in 2002, he learned that Detective Disotuar had been indicted in state and federal court for crimes involving moral turpitude. The defendant claimed the State violated his constitutional rights by failing to disclose to him that Detective Disotuar was engaged in criminal activity at the time the defendant's case was pending and that Detective Disotuar may have disclosed his criminal acts to the State in exchange for leniency. The petition was dismissed at the second stage of the proceedings.

¶ 31 A. Appeal from the Second Stage Proceeding

¶ 32 In reversing the dismissal of the defendant's postconviction petition, this court determined that the defendant made a showing that Detective Disotuar engaged in criminal activity from 1996 to 2000, in order to obtain criminal convictions. The time was in close proximity to the time the detective obtained the defendant's confession and was ongoing at the time he testified at the defendant's pretrial hearings and trial. We found that the defendant had made a substantial showing that his constitutional right to due process was violated by Detective Disotuar. Therefore, the defendant was entitled to an evidentiary hearing on his allegations. See *People v. Williams*, No. 1-07-3319 (2009) (unpublished order under Supreme Court Rule 23) (*Williams II*).

¶ 33 B. Evidentiary Hearing

¶ 34 1. *For the Defendant*

¶ 35 Kenyetta Barlow testified as follows. In exchange for allowing him to conduct his drug-selling business without police interference, Detective Disotuar required Mr. Barlow to pay money or act as an informant for the detective. Detective Disotuar forced him to "fabricate"

testimony against the defendant in the Johnson shooting by threatening to arrest him and ruin his business as a cocaine dealer.

¶ 36 In August 1995, Mr. Barlow had a pending charge for selling drugs in Carbondale, Illinois. Detective Disotuar and another officer came to his residence in Bellwood and asked him to return with them to the Bellwood police station.² Mr. Barlow spoke to Detective Disotuar while they sat in the detective's car and then at the Bellwood police station about Mr. Johnson's murder. He did not recall if the other officer was present during the discussion in the police station. Mr. Barlow could not state if the other officer was Detective Leslie, since he did not know Detective Leslie.

¶ 37 On November 8, 1995, Mr. Barlow testified before the grand jury investigating the death of Mr. Johnson. Mr. Barlow told the grand jury that the defendant asked him if he knew where to purchase a gun and that the defendant talked about killing people. Subsequently, he recounted that same conversation with the defendant at the defendant's murder trial because he was afraid of the consequences if he did not testify, *i.e.*, he would be in trouble with Detective Disotuar or be arrested by the detective or his fellow detectives.

¶ 38 Prior to his testimony before the grand jury investigating Mr. Johnson's murder, Mr. Barlow spoke with an assistant State's Attorney. He did not remember Detective Disotuar being present during their conversation or in the grand jury room when he testified. Mr. Barlow's testimony as to his address and how long he had known the defendant was truthful, but he

² At the defendant's trial, Mr. Barlow testified that he spoke with the Bellwood detectives on October 8, 1995. At the evidentiary hearing, he testified that he spoke to them in August 1995, but did not specify a date.

maintained the rest of his testimony, relating his conversation with the defendant prior to Mr. Johnson's murder, was fabricated.

¶ 39 Mr. Barlow acknowledged that he spoke with an assistant State's Attorney prior to the trial. But he never disclosed that he was being compelled to testify falsely against the defendant. He tried to tell the defendant's attorney that he was being forced to lie about the defendant, but he was too fearful. In his trial testimony he even tried to "step back" from some of the statements he had been coached to say by Detective Disotuar. Mr. Barlow further acknowledged that he never told the Federal Bureau of Investigation (FBI) that Detective Disotuar forced him to commit perjury. The detective never asked him to testify falsely against anyone else.

¶ 40 After the defendant's trial, Mr. Barlow maintained his "business" relationship with Detective Disotuar. Sometime in 1998 or 1999, Mr. Barlow went to the FBI and reported that a "cop" was "extorting" him. The FBI gave him money to give to Detective Disotuar and equipped Mr. Barlow with a device to record conversations with Detective Disotuar about their business relationship.

¶ 41 Detective Disotuar testified as follows. Between the years 1995 to 1999, he worked for the Bellwood police department. In 2002, Detective Disotuar pleaded guilty in federal court to racketeering activity between 1996 and 2000 and was sentenced to 97 months' imprisonment and a cash penalty in the amount of \$178,299. Also in 2002, he pleaded guilty in Lake County to two counts of official misconduct.

¶ 42 Detective Disotuar denied receiving payoffs from drug dealers, including Mr. Barlow, between 1995 and 1998. He denied instructing Mr. Barlow what to testify to at the defendant's murder trial. While the detective usually obtained confessions in cases in which he was the lead

detective, none of those confessions were coerced. The detective further denied that upon his arrest in 2001, he had a conversation with Vernon Hills Police Officer Andrew Jones. In his plea agreement in the federal case, Detective Disotuar admitted engaging in a pattern of racketeering activities from 1996 to 2000. He further acknowledged that he arrested a local drug dealer who paid him \$2,500 on August 25, 1999. Prior to his indictment, Detective Disotuar never informed the State's Attorney's office of his illegal activities. In the plea agreement entered in the federal case, Detective Disotuar never admitted to coercing a confession in a criminal case he worked on as a detective.

¶ 43 Mark Betten testified for the defendant as follows. He was an agent assigned to the Chicago office of the FBI between 1997 and 2000. At that time, Agent Betten knew Detective Disotuar through his work with the "Weed and Seed" program, a federally funded program for local communities. In "Weed and Seed," Detective Disotuar was in charge of the taskforce responsible for investigating drug and gang activity in Bellwood.

¶ 44 Agent Betten's first contact with Mr. Barlow took place on August 23, 1999, when Mr. Barlow and an unnamed associate reported that they were being extorted by Detective Disotuar. Mr. Barlow told the agent that he needed to pay Detective Disotuar \$2,500 or the detective would put him in jail. Mr. Barlow was given \$2,500 and instructed to place a consensual recorded telephone call to Detective Disotuar. Mr. Barlow's visit set in motion the investigation of Detective Disotuar, and their recorded conversation was used in the prosecution of Detective Disotuar.

¶ 45 Mr. Barlow explained to Agent Betten that he was living in the Carbondale, Illinois area when he got into trouble and served time there. In 1997, after his release, Detective Disotuar

contacted him to testify in a homicide case involving someone named "Glen." Mr. Barlow knew "Glen" from Carbondale, and he knew the victim's first name was Jason. Mr. Barlow told the agent that Detective Disotuar had him testify against Glen in a homicide case involving Jason and a gun. Agent Betten did not ask Mr. Barlow what he testified to, but he was concerned that if Mr. Barlow had been required to testify falsely, the matter required follow up or a report to state authorities. When the agent asked Mr. Barlow if he testified to what he knew was the truth, he responded that as far as he knew it was the truth. Agent Betten believed that Mr. Barlow's answer had alleviated any concern the agent might have that Mr. Barlow testified falsely since the agent chose not to follow up on the matter.

¶ 46 Agent Betten explained that there was investigation into allegations that Detective Disotuar coerced individuals into providing false testimony in criminal trials. The indictment against Detective Disotuar did not allege that he coerced witnesses to testify falsely or that he coerced confessions from defendants in criminal cases. In addition to Mr. Barlow, 10 to 15 individuals were interviewed about similar allegations of extortion on the part of Detective Disotuar, but other than Mr. Barlow's claim, there was no further evidence of his extortion of drug dealers.

¶ 47 Andrew M. Jones, a detective with the Vernon Hills police department, testified as follows. He participated in the arrest of Detective Disotuar in January 2001. Following the arrest, Detective Jones and Detective Disotuar had a conversation in the booking room of the police department. Detective Disotuar told Detective Jones that he committed crimes daily in the name of justice, that he was able to close every homicide case and recover the weapon in every case he investigated and that those things came with a price. Detective Disotuar admitted buying

drugs and lying, basically becoming the same type of person as those he arrested; at some point, he had to stop thinking in terms of right and wrong. He also did favors to pay for the kind of information necessary to close cases.

¶ 48 Detective Jones acknowledged that Detective Disotuar would not provide any specific details or a timeframe as to the occasions when he purchased drugs or lied or did favors for information. The detective did nothing to verify Detective Disotuar's statements. The Lake County investigation against Detective Disotuar began in March 1999, and did not involve any criminal activity on his part between 1995 and 1998.

¶ 49 *2. For the State*

¶ 50 Russell Baker, an assistant State's Attorney, testified as follows. He prepared Mr. Barlow for his testimony at the defendant's murder trial. In preparation, ASA Baker reviewed the Bellwood police reports of Mr. Barlow's interview with the Bellwood police. In the event it was necessary to impeach Mr. Barlow's testimony, ASA Baker would have called Detective Randy Leslie, now deceased, who wrote the report of Mr. Barlow's original statement to the police. During the pretrial interview, Mr. Barlow never told ASA Baker that he was coerced into testifying against the defendant and never told him that Detective Disotuar told him to fabricate evidence against the defendant.

¶ 51 *3. Circuit Court's Ruling*

¶ 52 In denying the defendant's postconviction petition, the circuit court rejected the defendant's claim that his right to due process was violated because Mr. Barlow was coerced into testifying falsely at the defendant's trial and that his perjured testimony was so persuasive that it affected the judgment of the jury to return a guilty verdict. The court found that Mr. Barlow's

testimony at the evidentiary hearing was not credible and was directly contradicted by Agent Betten's testimony. The court further found that Mr. Barlow's testimony would not have impacted the jury's verdict since he did not testify that the defendant asked him to purchase a gun for the defendant, did not testify that the defendant asked him where he could buy a gun so the defendant could kill someone and never testified that the defendant and he discussed killing a specific person. Mr. Barlow's trial testimony consisted of sitting with the defendant in a car discussing a rap song and having a conversation about a song. The court further found that the defendant failed to establish a pattern and practice by Detective Disotuar of coercing witnesses to testify falsely in cases he was assigned to investigate. The federal investigation revealed that only Mr. Barlow reported being coerced into providing false testimony by Detective Disotuar.

¶ 53 The circuit court rejected the defendant's claim that the State violated his due process rights by failing to inform him of Detective Disotuar's criminal activities. The court noted that Mr. Barlow did not report Detective Disotuar's criminal activities until he met with Agent Betten in 1999, sometime after his testimony against the defendant. The court further found that Detective Disotuar's pretrial and trial testimony was corroborated by the physical evidence, the medical examiner's testimony and that of other police officers, including Detective Leslie and the Houston police officers.

¶ 54 The circuit court rejected the defendant's allegation that Detective Disotuar physically coerced his confession. In his motion to suppress his statement, the defendant claimed that the Houston police officers beat him with a fire hose and struck him, but he made no allegations that Detective Disotuar physically coerced him to confess, until he raised it in his postconviction petition. While the defendant maintained that Detective Disotuar's criminal activities brought

into question his methods in solving crimes, the testimony of Agent Betten and Detective Jones failed to establish a pattern and practice on Detective Disotuar's part that he used physical force or mental coercion to obtain confessions.

¶ 55 The circuit court entered an order denying the defendant's postconviction petition. The defendant filed a timely notice of appeal from that order.

¶ 56 ANALYSIS

¶ 57 The sole issue on appeal is whether the circuit court's denial of the defendant's postconviction petition following a full evidentiary hearing was manifestly erroneous.

¶ 58 I. Standard of Review

¶ 59 The circuit court's ruling on a postconviction petition following an evidentiary hearing must be affirmed unless it is manifestly erroneous. *People v. Jones*, 2012 IL App (1st) 093180, ¶ 49. The court commits manifest error when the error is clear, plain, evident and indisputable. *Jones*, 2012 IL App (1st) 093180, ¶ 49. For the ruling to be manifestly erroneous, the reviewing court must find that the court's decision was not based on the evidence, was arbitrary and was unreasonable. *Jones*, 2012 IL App (1st) 093180, ¶ 49. The reviewing court affords substantial deference to the court's ruling on a postconviction petition following an evidentiary hearing. *Jones*, 2012 IL App (1st) 093180, ¶ 49.

¶ 60 II. Discussion

¶ 61 "To be entitled to postconviction relief, a defendant must show that he or she has suffered a substantial deprivation of his federal or state constitutional rights in the proceedings that produced the conviction or sentence being challenged." *People v. English*, 406 Ill. App. 3d 943,

952 (2010). At the third-stage evidentiary hearing, the defendant bears the burden of proof. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006).

¶ 62 A. Mr. Barlow's Credibility

¶ 63 The defendant maintains that the information Mr. Barlow provided to Agent Betten regarding Detective Disotuar's illegal activities established Mr. Barlow's credibility. In 1999, Mr. Barlow told Agent Betten that he was paying money to Detective Disotuar so he could sell drugs, which led to the detective's indictment and conviction and that Detective Disotuar contacted him in 1997 to testify against the defendant and told him what to say. The defendant further argues that Mr. Barlow's testimony was confirmed by Agent Betten's testimony, the transcription of the August 25, 1999, telephone conversation between Mr. Barlow and Detective Disotuar, and by Detective Jones' testimony.

¶ 64 “ [T]he reviewing court does not retry the defendant, and the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence.’ ” *People v. Christian*, 2016 IL App (1st) 140030, ¶ 111 (quoting *People v. Ross*, 229 Ill. 2d 255, 272 (2008)).

¶ 65 Contrary to the defendant's argument, Agent Betten's testimony does not corroborate Mr. Barlow's testimony that Detective Disotuar forced him to testify falsely against the defendant. While Mr. Barlow told Agent Betten that Detective Disotuar told Mr. Barlow what to say in his testimony, Agent Betten testified Mr. Barlow told him that “[w]hat he testified to his knowledge was the truth.” Mr. Barlow maintained that he never had the conversation with the defendant that he testified to at trial, and he would have known that what he testified to was not the truth. Since

Mr. Barlow admitted that he was a drug dealer and was providing information to Agent Betten about Detective Disotuar's criminal activities connected with his drug dealing, there would be no reason for him to conceal from the agent the fact that the detective forced him to give false testimony.

¶ 66 The defendant concedes that the transcript of the August 25, 1999, telephone call between Detective Disotuar and Mr. Barlow does not specifically confirm that Detective Disotuar coerced Mr. Barlow to provide false testimony. Rather, the transcript confirms that Mr. Barlow informed on someone in the past and supports Mr. Barlow's testimony at the evidentiary hearing that he was never asked to commit perjury again.

¶ 67 Nothing in the recorded conversation provides any corroboration for Mr. Barlow's testimony. It is not reasonable to infer from the fact that Mr. Barlow "informed" on someone in the past that Mr. Barlow would commit the crime of perjury, which is hardly comparable to informing on an individual. The recorded conversation merely confirmed the relationship between Mr. Barlow and Detective Disotuar, a fact that is not disputed.

¶ 68 The defendant also concedes that Detective Jones' testimony that Detective Disotuar admitted that he did favors or paid for information to solve homicide cases, as well as lying and buying drugs, does not specifically prove that Mr. Barlow's testimony at the evidentiary hearing was truthful. The defendant maintains, however, that Detective Jones' testimony provides support for Mr. Barlow's claims of Detective Disotuar's misconduct in the defendant's case.

¶ 69 Detective Jones acknowledged that Detective Disotuar never provided any details relating to criminal activities he engaged in or over what period of time he committed such crimes. While Detective Jones' testimony contradicted Detective Disotuar's testimony that he made no

statement to the Vernon Hills police, the testimony does not bolster Mr. Barlow's credibility as a witness at the evidentiary hearing.

¶ 70 The defendant further maintains that the only evidence rebutting Mr. Barlow's testimony was Detective Disotuar's testimony denying that he coerced him to testify falsely against the defendant. The defendant maintains that, in light of his convictions in federal and state court and because he was known for concealing his criminal activity, Detective Disotuar was a less credible witness than Mr. Barlow. See *People v. Paul*, 304 Ill. App. 3d 404, 410 (1999) (crimes involving dishonesty can reflect on a person's likelihood of telling the truth when testifying as a witness). The defendant points out that in contrast, Mr. Barlow had one prior drug conviction, and he volunteered information regarding his drug-selling operation to the FBI. But, as we recognized previously, the credibility determinations are the responsibility of the trier of fact. *Christian*, 2016 IL App (1st) 140030, ¶ 111. Moreover, nothing in the circuit court's findings indicate that its credibility finding as to Mr. Barlow was based in any way on finding that Detective Disotuar was a credible witness or more credible than Mr. Barlow. Lacking the advantage of the trier of fact, who heard and observed the witnesses while testifying, we are not in a position to judge the relative credibility of either witness and may not usurp the credibility finding of the circuit court in this instance.

¶ 71 Finally, the defendant blames his postconviction counsel's method of questioning and the passage of time, some 20 years, for Mr. Barlow's confusing and contradictory testimony. However, the trier of fact is in the best position to evaluate the impact of those factors on the credibility of the witness. See *People v. Sanders*, 2012 IL App (1st) 102040, ¶ 15 (the trier of fact is in the best position to determine credibility because it saw and heard the witnesses).

¶ 72 We conclude that the circuit court's determination that Mr. Barlow was not a credible witness was supported by the evidence and was neither arbitrary nor unreasonable.

¶ 73 B. Use of Perjured Testimony At Trial

¶ 74 The defendant correctly notes that the knowing use of perjured testimony violates a defendant's right to due process. *People v. Mitchell*, 2012 IL App (1st) 100907, ¶ 66. The use of perjured testimony violates a defendant's right to due process even if the prosecution was unaware that the testimony was false if the police knew about the perjury. *Mitchell*, 2012 IL App (1st) 100907, ¶ 66 (citing *People v. Olinger*, 176 Ill. 2d 326, 348 (1997) (knowledge on the part of any agent or representative of the prosecution, such as the police, is sufficient)). The reviewing court should set aside any conviction obtained by perjured testimony if the defendant shows “ ‘any reasonable likelihood that the false testimony could have affected the jury's verdict.’ ” *Mitchell*, 2012 IL App (1st) 100907, ¶ 66 (quoting *Olinger*, 176 Ill. 2d at 345).

¶ 75 The defendant argues that Detective Disotuar knew that Mr. Barlow's testimony at the defendant's trial was false because the detective fabricated it. The success of the defendant's argument depends on whether he established that Mr. Barlow's testimony at the defendant's trial was in fact false. The circuit court found that Mr. Barlow was not a credible witness at the evidentiary hearing and rejected his testimony that he testified falsely at the defendant's trial. We have reviewed that finding and found no basis to disturb the court's credibility determination. The defendant failed to establish that Mr. Barlow testified falsely at his trial, and his due process claim based on Mr. Barlow's perjured testimony fails.

¶ 76 Assuming, *arguendo*, Mr. Barlow lied about his conversation with the defendant prior to the murder of Mr. Johnson, was there a reasonable likelihood that his testimony affected the jury's verdict? We conclude there was not.

¶ 77 In his testimony, Mr. Barlow recounted a conversation with the defendant while they were listening to a rap song about "killing and stuff like that" on the radio. The defendant asked Mr. Barlow if he knew where the defendant could find a gun and then wanted to know how Mr. Barlow would feel if he (Mr. Barlow) killed someone. Mr. Barlow placed this conversation as occurring between August 13 and 19, 1995. Mr. Johnson's body was found on August 28, 1995. On cross-examination by the defendant's trial attorney, Mr. Barlow denied that the defendant asked him to "do a killing." Mr. Barlow stated that the discussion about the gun and how he would feel about killing someone was only a discussion of the rap song they were listening to.

¶ 78 Nothing in Mr. Barlow's testimony at the defendant's trial suggested that the defendant planned to or even thought of obtaining a gun in order to kill anyone, let alone Mr. Johnson who was not even mentioned in the discussion. The defendant did not consider Mr. Barlow's testimony damaging to his case. If in fact, as Mr. Barlow now claims, the conversation with the defendant never took place, the defendant would have known that when Mr. Barlow testified at the trial. Yet in cross-examination, defense attorney never challenged Mr. Barlow's testimony that he had this conversation with the defendant, and the defendant never claimed his trial attorney was ineffective for not doing so. There is no reasonable likelihood that the jury found the defendant guilty of Mr. Johnson's murder simply because Mr. Barlow told the jury that the defendant enjoyed music with lyrics about violence. See *People v. Page*, 193 Ill. 2d 120, 158 (2000) (where the testimony of the witnesses played a minor role in the State's case, there was

no reasonable possibility that their testimony could have affected the jury's verdict no substantial showing of a constitutional violation resulting from the use of perjured testimony).

¶ 79 The defendant then maintains that the circuit court failed to consider that Detective Disotuar also testified falsely at the defendant's trial. While acknowledging that Detective Disotuar's trial testimony was not an "outright lie," he claims it misled the jury because it added credibility to Mr. Barlow's "false" testimony. Specifically, it allowed the jury to believe that whatever Mr. Barlow told Detective Disotuar prompted the trip to Houston to confront the defendant and to obtain a confession from the defendant that he killed Mr. Johnson.

¶ 80 At trial, Detective Disotuar testified that records from Mr. Johnson's pager indicated that the defendant paged Mr. Johnson the night of his death and that the last call Mr. Johnson made was to a telephone number registered to the defendant's father. Detective Disotuar and Detective Leslie interviewed the defendant on August 29, 1995, the day after Mr. Johnson's body was found. After the interview, Detective Leslie told the defendant not to leave town as they might want to interview him again. On September 8, 1995, the defendant's employer informed Detective Disotuar that the defendant had quit his job. The detective then went to the defendant's residence to interview him again, but the defendant's father explained that the defendant had left for Houston, Texas. Prior to September 8, 1995, the defendant had not informed Detective Disotuar that he was quitting his job or that he was going to Houston, Texas. The detective asked Mr. Williams for a telephone number and an address for the defendant so he could be contacted in Houston, but he did not provide any further information. The defendant did call the Bellwood police on September 8 and 14, 1995, leaving telephone numbers where he could be reached but refusing to provide an address. On October 8, 1995, Detective Disotuar and Detective Leslie

spoke with Mr. Barlow. Their trip to Houston was delayed until November 8, 1995, due to a family matter of Detective Leslie's.

¶ 81 It is clear that the detectives' visit to Houston was not prompted solely by Mr. Barlow's statement to police as the defendant suggests. The evidence from the telephone records, the fact that after the detectives spoke to him, the defendant left his employment, moved to Houston, and would not provide an address where he could be located established that Mr. Barlow's statement was just one more piece of evidence obtained in the investigation.

¶ 82 We conclude that the defendant failed to establish a denial of his constitutional right to due process.

¶ 83 C. New Pretrial Hearings

¶ 84 The defendant contends that he is entitled to new hearings on his motions to quash arrest and to suppress evidence and his confession. The defendant acknowledges that in his direct appeal, this court affirmed the trial court's denial of his pretrial motions. See *Williams I*, at 30, 32. Relitigation of a pretrial ruling on a motion to suppress is barred by collateral estoppel, with two exceptions: new evidence that would have been pertinent to the rulings and special circumstances that would warrant relitigation of the motions. *People v. Cannon*, 293 Ill. App. 3d 634, 639-40 (1997). In *Cannon*, this court found that the evidence of other claims of police torture at or near the time the defendant was questioned and the lack of evidence that his attorney knew or should have known of these other claims constituted newly discovered evidence and special circumstances. *Cannon*, 293 Ill. App. 3d at 640-41.

¶ 85 In reversing the dismissal of the defendant's postconviction petition at the second stage, this court determined that defendant's claim of newly discovered evidence consisting of

Detective Disotaur's conviction on federal corruption charges and statements the detective made admitting he told lies and committed crimes to obtain confessions required an evidentiary hearing. *Williams II*, at 11. Noting that the denial of the defendant's motion to suppress his confession was based on the determination that Detective Disotuar was a credible witness, we stated "[e]vidence that Detective Disotuar not only lied but did so to obtain confessions could very well change the result on retrial." *Williams II*, No. 1-07-3319 at 16.

¶ 86 The defendant maintains that Detective Disotuar's use of the fabricated conversation between Mr. Barlow and the defendant to obtain the defendant's confession undermines the detective's credibility at the hearings on the motion to suppress his statement and the motion quash arrest and suppress evidence. We disagree. First, the circuit court rejected Mr. Barlow's testimony as not credible. Second, in his testimony at the evidentiary hearing, Detective Jones acknowledged that Detective Disotuar provided no time frame and did not refer to specific cases in which he lied. Third, Agent Betten testified that the investigation into Detective Disotuar's corrupt acts did not reveal any evidence that the detective coerced confessions from defendants in criminal cases and then lied about it in court.

¶ 87 The defendant argues that he was forced to confess because he knew that Mr. Barlow's statement was untrue. He cites *People v. Rivera, Jr.*, 2011 IL App (2d) 091060, wherein the reviewing court observed that reasons innocent persons might confess included "to avoid apparent peril." *Rivera, Jr.*, 2011 IL App (2d) 091060, ¶ 40. The defendant submits that, regardless of his guilt or innocence, when he realized the police were capable of presenting false evidence, *i.e.*, Mr. Barlow's statement, against him, he was motivated to get his version of the

facts before the police. Since Mr. Barlow's statement was not false, the defendant did not face an "apparent peril," motivating him to confess falsely to Mr. Johnson's murder.

¶ 88 The defendant claims that he should receive a new hearing on his motion to quash his arrest. Because Detective Disotuar used corrupt tactics to investigate this case, fabricated the evidence to confront the defendant and misled the trial court about the investigation, the defendant asserts that the detective's testimony that the defendant was not under arrest in Houston must be reassessed. He maintains that it was only Detective Disotuar who disputed the facts the defendant testified to in support of his claim that he was under arrest despite the fact that there was no probable cause for his arrest. The defendant argues that the circuit court erred when it found that Detective Disotuar's testimony at the hearing on the motion to quash was supported by the testimony of other police officers at that hearing.

¶ 89 The defendant failed to show that evidence of Detective Disotuar's criminal activities would have been pertinent to the rulings on the defendant's pretrial motions. This court ordered an evidentiary hearing to allow the defendant the opportunity to present evidence that Detective Disotuar not only lied but did so to obtain confessions. With the exception of Mr. Barlow's testimony, which was rejected as not credible by the circuit court, there was no evidence that Detective Disotuar's criminal activities, either in 1995 or thereafter, included forcing witnesses to perjure themselves or that the detective used abusive tactics to coerce individuals to confess and then lied about it in court. Moreover, the circuit court considered the testimony at both pretrial hearings in finding that Detective Disotuar's testimony was supported by that of the other police officers. We conclude that there are no "special circumstances" present in this case that would justify relaxing the collateral estoppel bar.

¶ 90 In *Cannon*, this court found special circumstances existed where the police officers who allegedly participated in torturing the defendant to confess had been named in other claims of confessions obtained by torture at the same location and close in time. *Cannon*, 293 Ill. App. 3d at 640-41. The court in *Cannon* noted that in *People v. Banks*, 192 Ill. App. 3d 986 (1989), the reviewing court held that the trial court erred in excluding evidence that police officers had brutalized another suspect 13 months before Mr. Banks was arrested. Such evidence was probative as to the conduct they employed in obtaining Mr. Banks' confession. *Cannon*, 293 Ill. App. 3d at 641; *Banks*, 192 Ill. App. 3d at 994. The court in *Cannon* stated "[w]e cannot avoid observing that the two officers referred to in the *Banks* case were two of the officers who arrested and questioned Darryl Cannon on November 2, 1983. Banks was arrested on October 28, 1983." *Cannon*, 293 Ill. App. 3d at 641.³

¶ 91 In the present case, Mr. Barlow's claim in 1999 that Detective Disotuar was extorting money from drug dealers initiated the investigation of Detective Disotuar's activities between 1996 and 2000. The investigation revealed no evidence that Detective Disotuar's corrupt activities included coercing individuals to confess. The detective was never charged with forcing witnesses to commit perjury in order for him to solve his cases. Unlike *Cannon*, where similar claims of torture were made in a number of cases, Mr. Barlow's claim that Detective Disotuar fabricated the statement used to force the defendant to confess stood alone and was ultimately rejected by the circuit court.

³ The court found it did not need to consider whether the fact that the ruling denying the motion to suppress was made by Thomas Maloney, a judge convicted of taking bribes in murder cases, was sufficient reason for a new hearing. *Cannon*, 293 Ill. App. 3d at 639, 642.

¶ 92 We conclude that the defendant failed to prove that new evidence or special circumstances in this case required that he receive new hearings on his motions to quash arrest and suppress evidence and to suppress statements.

¶ 93 **CONCLUSION**

¶ 94 The record in this case supports the circuit court's determination that the defendant failed to prove a violation of his constitutional rights in the proceedings that led to his conviction and sentence for Mr. Johnson's murder. Since the court's determination was based on the evidence, was not arbitrary and was reasonable, the denial of the postconviction petition was not manifestly erroneous and must be affirmed by this court. *Jones*, 2012 IL App (1st) 093180, ¶ 49.

¶ 95 The judgment of the circuit court is affirmed.

¶ 96 Affirmed.