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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE)	Appeal from the Circuit Court
STATE OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 94-CF-148
)	
FREDERICK R. LAMBERT,)	Honorable
)	Joseph G. McGraw,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant’s amended successive postconviction petition was properly dismissed because the evidence presented was not “newly discovered.”

¶ 2 Following a 1994 jury trial, defendant, Frederick R. Lambert, was convicted of first-degree murder (720 ILCS 5/9-1(a) (West 1994)). Defendant appealed that conviction, and this court reversed. *People v. Lambert*, 288 Ill. App. 3d 450 (1997) (*Lambert I*). The matter was retried before a jury, and defendant was again convicted of first-degree murder, receiving a 100-year sentence. Defendant again appealed, and this court affirmed the conviction but vacated the sentence and remanded the matter for resentencing due to an *Apprendi* violation (*Apprendi v.*

New Jersey, 530 U.S. 466 (2000)). *People v. Lambert*, No. 2-99-0408 (August 3, 2001) (unpublished order under Supreme Court Rule 23) (*Lambert II*). In December 2001, defendant filed a *pro se* postconviction petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2000)). This petition was dismissed without an evidentiary hearing, and defendant appealed. This court affirmed the dismissal of defendant's *pro se* postconviction petition. *People v. Lambert*, No. 2-02-0560 (May 10, 2004) (unpublished order under Supreme Court Rule 23) (*Lambert III*). As defendant's *pro se* postconviction petition was proceeding, defendant was also given a new sentencing hearing pursuant to *Lambert II*. This time, defendant was given a 60-year sentence for first-degree murder. Defendant appealed from the denial of his motion to reconsider the 60-year sentence, and this court affirmed. *People v. Lambert*, 364 Ill. App. 3d 488 (2006) (*Lambert IV*). In March 2007, defendant filed a successive postconviction petition, alleging actual innocence. The successive petition was advanced to the second stage and subsequently amended. Thereafter, the State moved to dismiss the amended successive petition, and the trial court granted the State's motion. Defendant appeals, arguing that the evidence of actual innocence was newly discovered, material and noncumulative, and constituted a substantial showing of a constitutional violation that should warrant the petition's advancement to a third-stage evidentiary hearing. Because we determine that the evidence on which defendant relies was not newly discovered, we affirm the trial court.

¶ 3

I. BACKGROUND

¶ 4 This appeal stems from defendant's second trial for the October 29, 1993, murder of Anthony Doss, the facts of which are adequately set forth in *Lambert II*. Nevertheless, we summarize those facts necessary for an understanding of defendant's contentions on appeal.

¶ 5 In overview, on October 29, 1993, Doss was beaten to death at the apartment of

defendant's aunt, located on School Street in Rockford, Illinois. The apartment was cleaned with bleach, in order to "kill[the] DNA," and Doss's body was dumped in a local cemetery. Later, Doss's upper and lower jaws were removed in order to hinder identification efforts. Eventually, Doss was identified, and defendant was charged with his murder.

¶ 6 At the retrial, the key occurrence witnesses were Lucio Flores (Lucio), defendant's half-brother, and Antowan Lambert (Antowan),¹ defendant's nephew. At the retrial, Lucio purported to have difficulty remembering the events surrounding the Doss murder. The State led Lucio through the bulk of his testimony from the first trial line-by-line, asking Lucio if that had been what he had been asked during the first trial and if that had been his answer then. Additionally, the State asked Lucio if what was described in the first-trial testimony had happened. Lucio agreed that he had been asked those questions, given those answers, and the event described in the testimony had happened.

¶ 7 We recap Lucio's testimony, noting that when we say that "Lucio testified," we mean that he was confronted with the questions and answers from the first trial, and agreed that they had been asked and given. Lucio testified that defendant had been planning to stick up a drug dealer for whom Doss was a key lieutenant. On October 29, 1993, the planned stick-up was put into effect. Defendant would lure Doss to the School Street apartment, and Lucio, Antowan, Maurice Bowden, Alex Dowthard, and Carl Dickson would pretend to rob both defendant and Doss, extracting information about where the targeted dealer kept his money and drugs.

¹ Antowan's first name is subject to a number of different spellings throughout the record. However, as he himself spelled his first name as "Antowan," we shall use this spelling throughout this disposition.

¶ 8 Lucio testified that defendant brought Doss to the School Street apartment. Lucio and Dickson exited the apartment's back door and knocked on the front door. When defendant opened the door, he and Dickson burst into the room while the remaining confederates appeared to enter the apartment through the back door. Lucio grabbed defendant, and Dickson ran at Doss, striking him in the face with his pistol. Lucio brought defendant into one of the bedrooms in the back of the apartment. The others fought with Doss, eventually subduing him and bringing him to the other bedroom in the back of the apartment.

¶ 9 Lucio testified that he acted as defendant's messenger: defendant would give him instructions which he relayed to the others as they beat Doss in an attempt to learn the location of the targeted drug dealer's money and drugs. Doss, however, did not give up the information. Defendant instructed Lucio to tell the others not to kill Doss, and the beating continued, this time with Lucio's participation. Doss continued to deny that he knew the location of the money and drugs. Lucio returned to defendant, who instructed Lucio to relay that they should tie up Doss and cover his head. Once this was accomplished, defendant entered the bedroom, and he whispered his questions to Lucio, who would announce them to Doss. At this point, Doss fell silent and did not answer defendant's relayed questions. At defendant's direction, Doss was carried into the basement, and a plastic bag was tied over his head.

¶ 10 Lucio testified that defendant believed that the targeted drug dealer's money and drugs might be located at a house on Horace Avenue. Lucio was given a handgun and told to stay with Doss, and everyone else left. Lucio checked on Doss, who was still tied up in the basement, and Doss was wheezing and his chest was moving. Lucio began to pick up the apartment and, after a brief time, the others returned. Lucio again checked on Doss, but this time, Lucio believed that Doss was no longer breathing. Defendant told "somebody go down there and make sure." Lucio

testified that Dickson went into the basement and strangled Doss.

¶ 11 Lucio testified that they cleaned the apartment using bleach. After this, defendant told Antowan to get his car and back it up to the front porch. Doss's body was brought upstairs and placed into the trunk of Antowan's car. Lucio and defendant got into defendant's car, and the others got into Antowan's car. The two cars drove around, eventually reaching Meridian Road, where they stopped at a cemetery. They dumped Doss's body into a ditch running along a line of trees.

¶ 12 Lucio testified that, in December 1993, he asked defendant if he had "taken care of that," meaning moving or burying Doss's body. Defendant replied that he had not, because the body had become frozen to the ground. Lucio asked defendant how defendant had handled it, and defendant made a circular motion with his hand across the lower part of his face, which Lucio interpreted to mean that defendant had removed Doss's upper and lower jaws.

¶ 13 Lucio testified that he was charged with first-degree murder for Doss's murder. He was allowed to plead guilty to aggravated battery and concealment of a homicidal death, receiving a 30-month sentence of probation (which included a 9-month period spent in jail) in exchange for his truthful testimony in the first trial.

¶ 14 Lucio also testified that, on January 7, 1994, when he turned himself into the police, he had given a written statement. He did not have any agreement with the State at the time he provided the written statement. The State used the same method questioning Lucio about the statement as it had in questioning him about his testimony from the first trial: the prosecutor would read a portion of the written statement and ask Lucio if that was what he told police at that time. Lucio would answer, "Yes." The prosecutor would ask Lucio if that had happened, and Lucio would reply, "Yes." In this fashion, the entire written statement was admitted into

evidence. The written statement was consistent with Lucio's direct testimony. The written statement was not admitted as substantive evidence, but as a prior consistent statement used to rebut the inference that Lucio was testifying falsely at the retrial in order to obtain a favorable disposition on some pending criminal charges. The jury was instructed that the written statement was to be considered only for rehabilitative purposes.

¶ 15 Antowan testified that defendant and Lucio were his uncles and he knew Bowden, Dowthard, and Dickson. When he was questioned about the events in October 1993, Antowan professed that he could not remember. He was allowed to review his testimony from the first trial and a January 4, 1994, written statement he provided to the police. After this, Antowan testified that he had been present at the School Street apartment when Doss was beaten and strangled. Antowan testified that defendant was not present at the apartment on the date Doss was beaten and strangled; rather, he testified that only he, Lucio, Bowden, and Dowthard had participated in the beating and strangulation of Doss. Antowan professed that he could not remember that he had previously testified that defendant was the mastermind of the offense or that defendant was involved in the offense. Instead, Antowan testified that he had testified at the first trial because he wanted to receive a favorable deal on his own charge stemming from the Doss murder, and he maintained that he could not remember his testimony from the first trial.

¶ 16 The prosecutor followed the same procedure as he had with Lucio: he read Antowan's testimony from the first trial line-by-line. Unlike Lucio, Antowan professed that he did not remember any of the questions or his answers from the first trial. Antowan's testimony from the first trial was substantially similar to Lucio's testimony at the retrial (and the first trial). Antowan's testimony was admitted as substantive evidence pursuant to section 115-10.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10.1 (West 1998)).

¶ 17 Antowan testified that he recalled giving a nine-page written statement to the police. Antowan acknowledged that his signature appeared on the bottom of each of the nine pages. Later in the trial, Detective Robert Redmond testified about the procedure he used in taking the nine-page written statement from Antowan. Redmond then read the statement to the jury. The nine-page written statement was substantially similar to Antowan's testimony from the first trial.

¶ 18 Before the commencement of the retrial, defendant learned that Lucio and Antowan wished to avoid testifying by claiming their fifth-amendment rights against self-incrimination, because they intended to testify inconsistently with their testimony in the first trial. The matter was litigated, and the trial court held that, in light of their earlier cooperation and testimony, neither Lucio nor Antowan could claim those rights, even if it meant, hypothetically, they would be subject to a charge of perjury.

¶ 19 Additionally, during the second trial, Harold Packard, a private investigator working on defendant's behalf, testified that, on January 13, 1998, he had taken a statement from Lucio. In that statement, Lucio stated that the testimony he had given at the first trial was false and was given only to secure a favorable deal on his charges.

¶ 20 Similarly, during the course of the second trial, Antowan's attorney noted, on the record, that Antowan was not expected to testify consistently with his testimony from the first trial. Additionally, Antowan was questioned about a statement he had given to Packard in which he repudiated his testimony from the first trial.

¶ 21 As noted, defendant was eventually convicted of Doss's murder. Eventually, on March 29, 2007, defendant filed a successive postconviction petition, claiming actual innocence. The trial court did not timely review the successive petition, and it was passed along to the second stage. An attorney was appointed to represent defendant during the proceedings on the

successive petition.

¶ 22 Owing to the voluminous nature of the record and the difficulty in communicating with defendant, the successive petition languished. On March 4, 2011, defendant filed a motion for leave to file a successive postconviction petition, accompanied by the successive postconviction petition. The successive petition included affidavits from defendant, Lamarr Flores (Lamarr), and Lucio. Essentially, defendant's and Lamarr's affidavits provided that Antowan had told Christopher Benford that Antowan had scripted Lucio's statement to the police. Antowan had also refused to talk with defendant, but Lamarr had been able to verify the claim that Antowan directed Lucio's statement to the police. Lucio's affidavit averred that Antowan had been the mastermind of his statements to police, and that his statements and first-trial testimony about the murder of Doss was untrue regarding defendant's involvement. The key portion of Lucio's affidavit was the statement: "I was present at the murder and took part, but [defendant] were [*sic*] nowhere around."

¶ 23 On December 8, 2011, the trial court granted defendant leave to file the successive postconviction petition alleging actual innocence. On June 29, 2012, defendant filed an amended successive postconviction petition. The amended successive petition again alleged actual innocence, and it was supported by the same affidavits.

¶ 24 On May 13, 2013, the State filed a motion to dismiss the amended successive petition. On April 4, 2014, the trial court dismissed the petition. The trial court held:

“1. The Petitioner herein has failed to establish an actual innocence claim for the following reasons:

2.

a) The recanting witnesses, [Antowan and Lucio], in the attached post

conviction petition are inherently unreliable and offer only evidence that would be used as impeachment at trial;

b) The recanting witnesses [Antowan and Lucio], were witnesses that were available at the time of the trial in this case;

c) The testimony of witnesses [Antowan and Lucio] testimony [*sic*] is cumulative;

d) The petitioner lacked due diligence in procuring the testimony of [Antowan and Lucio] as evidenced in their affidavits;

e) That the testimony of [Antowan and Lucio] would only cast doubt as impeachment evidence on the State's case but not obliterate it;

f) That the recantation testimony of witnesses [Antowan and Lucio] did not amount to such extraordinary circumstances to establish an 'actual innocence claim' as it would be impeachment evidence at trial;

g) Further, the testimony of [Antowan and Lucio] was not so close in nature to have changed the outcome of the trial in the instant case as it would be for impeachment purposes.”

¶ 25 The trial court also elaborated its reasoning in an oral pronouncement:

“This is, essentially, if you boil it down, a claim of actual innocence alleging that others are responsible or that there is newly discovered evidence that provides a defense for [defendant]; however, it is established in the law that the recantation of testimony is regarded as inherently unreliable. The Court will not grant a new trial on that basis except in extraordinary circumstances.

Here the affidavits of Lucio Flores and Antowan Lambert simply recant their

testimony and would likely be used to impeach their trial testimony. The affidavits do not negate the testimony upon which the defendant's conviction was obtained. Instead, the affidavits would merely serve to cast doubt on the witnesses' trial testimony; would not, in essence, destroy or obliterate their earlier trial testimony, but rather, undermine or potentially undermine or attack their credibility—that's Mr. Flores and Mr. Antowan Lambert.

In looking at the factors that are applicable, the potential testimony of [Lucio] and [Antowan] are not newly discovered evidence because they were available at the time of both trials and only recant or impeach their previous testimony. The defendant has not displayed due diligence, as both potential witnesses were available at both trials. The affidavits are cumulative, not materially relevant to his actual claim of innocence, because the potential testimony will be used mainly for impeachment purposes. Lastly, the potential impeachment is not of such a conclusive nature that it would probably change the result of the retrial because there was sufficient additional inculpatory evidence used to convict [defendant].”²

¶ 26 Defendant filed a timely motion to reconsider which was denied. Defendant timely appeals.

¶ 27

II. ANALYSIS

² The “additional inculpatory evidence” included voluminous testimony about defendant's attempts to tamper with the jury and witnesses as well as his attempts to fabricate exculpatory evidence, all of which demonstrated his consciousness of guilt.

¶ 28 On appeal, defendant argues that Lucio's affidavit recanting his testimony from the first trial and affirmatively stating that defendant was not present or involved in Doss's murder made a substantial showing of defendant's actual innocence sufficient to warrant advancing the amended successive petition to a third-stage evidentiary hearing. The Act provides a three-stage process for resolving a postconviction petition. *People v. Bocclair*, 202 Ill. 2d 89, 99 (2002). In the first stage, which proceeds without any input from the State, the trial court must determine whether the petition is frivolous or patently without merit, meaning that the petition, liberally construed, sets forth the gist of a constitutional claim. *Id.* If the petition is frivolous or patently without merit, the trial court shall dismiss the petition. *Id.* at 100. If the petition presents the gist of a constitutional claim, then it proceeds to the second stage. *Id.* At the second stage, the trial court may appoint counsel to represent an indigent defendant, and counsel will be given an opportunity to amend the petition. *Id.* Following amendment, the State may file a motion to dismiss the petition. *Id.* If the State does not move to dismiss the petition, or if the petition survives the motion to dismiss, the petition will advance to the third stage and conduct an evidentiary hearing on the merits of the petition. *Id.*

¶ 29 In considering a postconviction petition in the second stage, the trial court must determine whether the petition makes a substantial showing of a constitutional violation in the proceedings that led to the defendant's conviction or sentence. *People v. Gray*, 2016 IL App (2d) 140002, ¶ 14. We accept as true all well-pleaded facts in the postconviction petition that are not refuted by the record. *Id.* We review *de novo* the second-stage dismissal of a postconviction petition. *Id.*

¶ 30 The Act generally contemplates the filing of but a single postconviction petition. *People v. Ortiz*, 235 Ill. 2d 319, 328 (2009). However, successive postconviction petitions will be

allowed where the defendant can demonstrate cause and prejudice as codified in section 122-1(f) of the Act (725 ILCS 5/122-1(f) (West 2006)). *Ortiz*, 235 Ill. 2d at 329-30. However, where the defendant in a nondeath-penalty case presents a claim of actual innocence in a successive postconviction petition, he or she is excused from the requirement of showing cause and prejudice. *Id.* at 330. In presenting a claim of actual innocence in a successive postconviction petition, the defendant must demonstrate that the evidence in support of the claim is newly discovered, material and not cumulative, and of such conclusive character that it would probably change the result on retrial. *Id.* at 333.

¶ 31 Defendant contends that the affidavits attached to the successive petition in this case satisfy the requirements needed to set forth a claim of actual innocence. We begin with defendant's contention that the evidence was newly discovered.

¶ 32 Defendant argues that the affidavit of Lucio and the explanation about Antowan in his and Lamarr's affidavits were newly discovered because the evidence was not available at the retrial, and he could not have discovered this evidence any sooner. "Newly discovered" evidence is defined as evidence that has been discovered since the trial and the defendant could not have discovered it sooner through due diligence. *Id.* at 334. Defendant contends that Lucio's and Antowan's evidence was collected after the trial. Further, because neither Lucio nor Antowan were willing to speak with defendant until 2007 when he obtained the information for his successive petition, the evidence could not have been discovered sooner through due diligence. Defendant concludes that the evidence supporting his claim of actual innocence, therefore, is newly discovered. We disagree.

¶ 33 Neither Lucio's nor Antowan's recantation can be considered to be newly discovered evidence, because defendant knew about the claims each made during the retrial. Packard

testified that Lucio had repudiated his purportedly false testimony from the first trial. When Packard was questioned, he read the statement he had taken from Lucio on January 13, 1998. Packard testified that Lucio told him that Lucio did not sign the January 1994 statement he gave to the police “because it wasn’t true.” Lucio further claimed in the January 1998 statement to Packard that the police showed him statements that other codefendants had made, so he “basically said the same thing that the others said, but [he] only knew about it from reading the statements.” Lucio further stated that:

“[A prosecutor] told [him] that [he] should say that the murder of Anthony Doss occurred on the night of October 29th, 1991. [The prosecutor] also told [him] that it would be in [his] best interest not to talk to [defendant’s] attorney. And if [he] helped [the prosecutor] convict [defendant], [the prosecutor] promised [him] that [he] wouldn’t go to prison.”

Finally, Lucio acknowledged that he had testified at the first trial, but claimed that he had not told the truth in that testimony.

¶ 34 Lucio’s affidavit attached to the amended successive postconviction petition reiterated the recantation of his first-trial testimony. This time, Lucio attempted to lay all the blame for his false testimony at Antowan’s feet, professing that Antowan, not the prosecutor, told him what to say, and that Antowan told him to say that defendant was present at the murder. Finally, Lucio professed that defendant was not present at the murder.

¶ 35 We believe that Lucio’s affidavit included in defendant’s successive petition essentially echoes the salient facts collected by Packard in January 1998. We further believe that, because this knowledge was available to defendant before the retrial, it cannot be deemed to be newly

discovered. Because it is not newly discovered, it cannot support defendant's claim of actual innocence. Further, defendant does not indicate how it can satisfy the cause-and-prejudice test.

¶ 36 Turning to Antowan's evidence, defendant was unable to obtain an affidavit from Antowan, because Antowan purportedly hated defendant and wished to see him imprisoned for the Doss murder even though defendant was purportedly not involved. At the retrial, Antowan testified that defendant was not present at the scene of the murder when it was committed. Moreover, on defendant's cross-examination of Antowan, Antowan admitted that he told Packard, well before the retrial, that his testimony from the first trial was false and his January 1994 written statement to police was not true. Additionally, Tamika Davis testified at the retrial outside of the jury's presence that Antowan told her "he was going to change his testimony, to help [defendant] out," or "to get [defendant] out of trouble." In front of the jury, Davis testified that Antowan "said he was going to switch his testimony [from the first trial]." She explained Antowan was going to change his testimony from the first trial "[s]o he could help [defendant] *** [b]eat the case, so [defendant] could get out of trouble."

¶ 37 In defendant's affidavit attached to his successive petition, defendant averred that, early in 2007, he spoke to Christopher Benford who informed him that Antowan admitted to Benford that he essentially framed defendant for the Doss murder, and that Antowan had coordinated the testimony of the codefendants to place the blame on defendant. Likewise, Lamarr's affidavit attached to defendant's successive petition made the same claim.

¶ 38 This, too, cannot be deemed to be newly discovered. Antowan admitted at the retrial that his testimony from the first trial was false, his 1994 written statement to the police was false, and he claimed that defendant was not at the scene of the murder at the time it occurred. Davis testified that Antowan was planning to "switch" his testimony from that he had given in the first

trial. In fact, Antowan's testimony at the retrial, such as it was, did "switch" from his first-trial testimony, in that Antowan claimed that defendant was not present at the scene of the murder when it occurred. Lamarr's affidavit makes the same claim. Accordingly, this cannot be deemed newly discovered evidence, because the information was known before the trial and was actually presented during the retrial.

¶ 39 Because the claims included in the affidavits were either available before the retrial or presented during the retrial, defendant's claim that the evidence was newly discovered fails. Because defendant cannot show that the evidence supporting his successive petition was newly discovered, he does not satisfy the requirements of presenting a claim of actual innocence in a successive postconviction petition. *Ortiz*, 235 Ill. 2d at 333. Therefore, defendant is not excused from satisfying the cause-and-prejudice test to demonstrate why he should be allowed to file a successive postconviction petition. Finally, defendant does not argue, and the evidence does not show, that he has fulfilled the requirements of the cause-and-prejudice test. Accordingly, we hold that the trial court correctly dismissed defendant's successive petition.

¶ 40 Defendant argues, relying on *People v. Ward*, 187 Ill. 2d 249, 255 (1999), that we must take the allegations in Lucio's affidavit as true. According to defendant, if we do that, and if we interpret Lucio's testimony at the retrial (which acknowledged that his first-trial testimony was given and the events depicted happened), then Lucio's affidavit is newly discovered because it was produced after the trial and controverted his retrial testimony. While defendant's claim that the allegations in the affidavit must be taken as true during the second-stage consideration of a postconviction petition is a correct statement of law, we note that defendant's formulation of the rule omits the important caveat, namely, that the facts will be deemed true if they are not refuted by the record. *Gray*, 2016 IL App (2d) 140002, ¶ 14. Here, defendant was aware that Lucio was

intending to recant his first-trial testimony in January 1998. Therefore, the allegations in Lucio's affidavit were known to defendant before the retrial and well before 2007, when he drafted his successive petition. Accordingly, we reject defendant's contention.

¶ 41 Defendant cites *People v. Washington*, 348 Ill. App. 3d 231, 237-38 (2004), for the proposition that evidence is newly discovered where the exculpatory information was not provided to the defendant until after his original postconviction petition was resolved. While this is a proper statement of law, it is inapplicable under the facts of this case. Here, defendant knew about Antowan's and Lucio's repudiation of their first-trial testimony before the retrial, and he knew that they were intending to claim that defendant was not involved in the Doss murder before the retrial. The rule in *Washington* is thus inapplicable to this case.

¶ 42 Defendant relies on *People v. Morgan*, 212 Ill. 2d 148, 154-55 (2004); *People v. Steidl*, 177 Ill. 2d 239, 261 (1997); *People v. Smith*, 2015 IL App (1st) 140494, ¶19; *People v. Harper*, 2013 IL App (1st) 102181, ¶ 42; and *United States v. Badger*, 983 F.2d 1443, 1456 (7th Cir. 1993), all for the proposition that a witness's affidavit recanting his or her trial testimony is newly discovered evidence. We are unsure if such a broad statement of the law is correct in all circumstances, but we need not make such a determination. Specifically, here, before the retrial, defendant was aware that Antowan and Lucio planned to recant their first-trial testimony and, at least in Antowan's case, did, to a certain extent, recant during his testimony in the retrial. Thus, defendant knew about the impending recantations almost a decade before he sought to portray it as newly discovered evidence in his successive postconviction petition. Accordingly, we reject defendant's contention.

¶ 43 Defendant also extends his argument to cover situations in which the defendant knew the witness was committing perjury. Defendant relies on *People v. Barnslater*, 373 Ill. App. 3d 512,

523-24 (2007), for the proposition that, even if the defendant knew that a witness was perjuring himself or herself during the trial, that witness's recantation would still be deemed to be newly discovered evidence unless the defendant had available at the time of the trial evidence to demonstrate that the witness was lying. While, arguably, this covers the situation presented here, where Antowan and Lucio admitted that their testimony in the first trial had been false, it does not address the fact that, before the retrial, defendant knew that Antowan and Lucio were planning to recant their first-trial testimony and knew that both had admitted that their first-trial testimony had been false. Accordingly, we reject defendant's contention.

¶ 44 Summing up, we hold that defendant failed to demonstrate that the affidavits supporting his amended successive postconviction petition were newly discovered because defendant knew the information they related before the retrial occurred. Accordingly, we affirm the trial court's judgment dismissing defendant's amended successive petition. Because defendant cannot satisfy the requirements to demonstrate that his claim of actual innocence was supported by newly discovered evidence, we need not consider his arguments regarding whether that evidence was material and noncumulative, or whether the evidence was of sufficiently conclusive character so as to change the result at a retrial.

¶ 45

III. CONCLUSION

¶ 46 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 47 Affirmed.