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2017 IL App (3d) 150552-U

Order filed September 19, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-15-0552
)	Circuit No. 00-CF-70
SHAWN M. PETRENKO,)	Honorable
Defendant-Appellant.)	Clark E. Erickson, Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's dismissal of defendant's motion for DNA and forensic testing is reversed as defendant made a *prima facie* case for testing.

¶ 2 Defendant, Shawn M. Petrenko, appeals from the circuit court's dismissal of his motion for DNA and forensic testing. Defendant argues that the court's dismissal was erroneous because the identity of the offender was at issue in the case, the evidence was subject to a sufficient chain of custody, and the results of the testing would be materially relevant to a claim of actual innocence. We reverse and remand.

FACTS

¶ 3

¶ 4

In the interest of consistency, the fact section of this case is constructed in part from the prior orders and opinions of this court and the supreme court. See *People v. Petrenko*, No. 3-02-0507 (2005) (unpublished order under Supreme Court Rule 23) (defendant's direct appeal); *People v. Petrenko*, No. 3-06-0508 (2008) (unpublished order under Supreme Court Rule 23) (defendant's postconviction appeal); *People v. Petrenko*, 237 Ill. 2d 490 (2010) (supreme court opinion reviewing defendant's postconviction appeal).

¶ 5

Defendant was charged by indictment with first degree murder (720 ILCS 5/9-1 (West 2002)) and residential burglary (720 ILCS 5/19-3 (West 2002)). The case proceeded to a jury trial.

¶ 6

The trial evidence established that on January 30, 2000, Rubin Rivas was found dead in his home. Rivas had been hit in the head nine times with a hammer or similar object. Blood splatter was observed throughout the house. Shoe prints were also visible in the blood. A crime scene investigator found latent fingerprints near the rear door of the residence, and on a telephone and ceramic mug where Rivas kept his rent money. Subsequent analysis of the fingerprints found that the fingerprint on the telephone did not belong to defendant or Rivas. However, one fingerprint on the ceramic mug was left by defendant's right thumb. Several other fingerprints on the ceramic mug were not analyzed.

¶ 7

Following the murder, the State applied for a warrant to search defendant's home. The State cited the following evidence in support of its application: a left-handed white glove with red, blue, and white paint on it found in Rivas's house; a right-handed white glove with red, blue and white paint on it found in defendant's garbage; mail addressed to Rivas found in defendant's garbage; a metal object broken off in the lock of Rivas's back door, a broken key with the tip

missing found in defendant's garbage; and defendant's fingerprint found on Rivas's empty ceramic mug that normally contained Rivas's rent money. The circuit court issued a search warrant for defendant's home.

¶ 8 Defendant lived next door to Rivas, and the search of defendant's home uncovered a wallet that belonged to Rivas. The wallet was found in a bag of clothes in a closet in the room of defendant's brother. The wallet was missing a zipper, and an officer noticed a zipper in a chest of drawers located in defendant's bedroom. At the time, the officer was unaware of the zipper's connection to the wallet and did not seize the zipper. Officers later executed a second search warrant on defendant's home to locate the zipper, but the second search did not find the zipper. A zipper that matched the wallet was later found in defendant's garbage.

¶ 9 The search of defendant's home also uncovered a pair of shoes that had blood stains on the tops. A forensic scientist testified that the shoes could have made the impression in the blood found at Rivas's house.

¶ 10 Forensic biologist Julie Glasner testified that DNA analysis on the blood stains on the tops of the shoes matched Rivas's DNA profile. However, the analysis could not determine the age of the blood stains. No evidence of blood was found on the soles of the shoes. Glasner also received fingernail clippings that were collected during Rivas's autopsy. Glasner said that she did not analyze the clippings for DNA.

¶ 11 Barbara Eastman testified that she used to help Rivas by driving him to the store and running errands for him. Eastman recalled that the last time she saw Rivas's wallet, it had a zipper attached. On the Monday or Tuesday before Rivas was murdered, Eastman dropped some items off at Rivas's house. Eastman remembered that defendant was inside Rivas's house when she delivered the items.

¶ 12 Scott Falkenhan testified that defendant came to his house to watch the Super Bowl on the afternoon of January 30, 2000. During the gathering, defendant stepped outside to smoke a cigarette several times. Defendant told Falkenhan that he had something on his mind.

¶ 13 Defendant testified that he and Rivas were friends and he had known Rivas for 10 years. Defendant helped Rivas with chores, and he drove Rivas to the bank and grocery store. On the Tuesday that Eastman stopped at Rivas's house, Rivas gave his wallet to defendant with instructions for defendant's mother to fix the zipper. Defendant placed Rivas's wallet into a bag of clothes. Defendant explained that his mother sewed for other people who dropped their items off in bags. Defendant also provided alibi evidence for his whereabouts around the time of the murder. The alibi largely consisted of hours spent sleeping or attending social events with friends.

¶ 14 In its closing argument, the State argued that defendant had broken into Rivas's home to steal money and then killed Rivas.

¶ 15 The jury found defendant guilty of first degree murder and residential burglary. The court sentenced defendant to natural life imprisonment for first degree murder and a consecutive term of 10 years' imprisonment for residential burglary.

¶ 16 On June 23, 2015, defendant filed a *pro se* motion for DNA and forensic testing. Defendant argued that testing was required because identity was a central issue to the case because there were no eyewitnesses to the murder. Defendant acknowledged that he could not certify or verify the chain of custody of the items he sought to have tested because he was incarcerated. Defendant sought DNA testing on the victim's fingernail clippings and a pair of white gloves found in a pool of Rivas's blood. Defendant also sought forensic testing on

fingerprints recovered from Rivas's home. Defendant argued that the resulting information would be materially relevant to a claim of actual innocence.

¶ 17 In a written order, the circuit court found that identity was not an issue. Specifically: (1) defendant's fingerprint was found on a coffee mug which Rivas kept his money in; (2) Rivas's blood was found on defendant's shoes; (3) Rivas's wallet was found in defendant's home hidden in a bag of clothes in a closet; (4) a white glove was found in defendant's garbage which matched the glove found in Rivas's house; (5) mail addressed to Rivas was found in defendant's garbage; (6) a key with the tip broken off was in defendant's garbage—a small metal object was found in the lock of Rivas's back door; and (6) bloody shoe prints in Rivas's home were consistent with the soles of defendant's shoes. The court also found that defendant had not alleged a sufficient chain of custody because defendant did not attach documents showing the current location of the items that he sought to have tested. For these reasons, the court *sua sponte* dismissed defendant's motion. Defendant appeals.

¶ 18 ANALYSIS

¶ 19 Defendant argues that the circuit court erred in denying his motion because he satisfied the *prima facie* case requirement for forensic or DNA testing under section 116-3 of the Code of Criminal Procedure of 1963 (Code) and the evidence would be materially relevant to a claim of actual innocence. 725 ILCS 5/116-3(a), (b), (c)(1) (West 2014). We review the denial of a section 116-3 motion *de novo*. *People v. Stoecker*, 2014 IL 115756, ¶ 21.

¶ 20 Section 116-3 of the Code permits a defendant to “make a motion before the trial court that entered the judgment of conviction in his or her case for the performance of fingerprint *** or forensic DNA testing.” 725 ILCS 5/116-3(a) (West 2014). To prevail on a section 116-3 motion for forensic or DNA testing, a defendant must present a *prima facie* case that:

“(1) identity was the issue in the trial or guilty plea 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.” 725 ILCS 5/116-3(b)(1), (2) (West 2014).

Where a defendant succeeds in making a *prima facie* case, the circuit court shall allow the fingerprint or DNA testing so long as “the result of the testing has the scientific potential to produce new, noncumulative evidence (i) materially relevant to the defendant’s assertion of actual innocence *** even though the results may not completely exonerate the defendant.” 725 ILCS 5/116-3(c)(1) (West 2014).

¶ 21 The State concedes that identity was at issue and the evidence was subject to a sufficient chain of custody. However, the State argues that additional fingerprint and DNA testing does not have the potential to uncover evidence that is materially relevant to a claim of actual innocence. Upon review, we accept the State’s concession and agree that defendant has established a *prima facie* case. But, we find that testing has the potential to uncover materially relevant evidence, and therefore reverse the circuit court’s dismissal.

¶ 22 “Evidence is ‘materially relevant’ if it will significantly advance defendant’s claim of actual innocence.” *People v. Grant*, 2016 IL App (3d) 140211, ¶ 25 (citing *People v. Shum*, 207 Ill. 2d 47, 65 (2003)). The determination of whether fingerprint and DNA testing has the potential to produce materially relevant evidence requires consideration of the evidence adduced at trial along with the evidence defendant seeks to test. *People v. Savory*, 197 Ill. 2d 203, 214 (2001). The testing of a certain piece of evidence need not completely exonerate a defendant. *Id.*

“[M]aterially relevant evidence is that which tends to significantly advance a defendant’s claim of actual innocence.” *People v. Gibson*, 357 Ill. App. 3d 480, 488 (2005).

¶ 23 After reviewing the trial record, we find that additional fingerprint and DNA testing has the potential to be materially relevant to a claim of actual innocence. Forensic evidence played a crucial role in securing defendant’s conviction as there were no eyewitnesses to the murder. Additionally, several exhibits were subject to only partial DNA testing. Specifically, fingerprint analysis discovered several fingerprints on the mug that contained Rivas’s money. However, the analysis was concluded after the first fingerprint matched defendant. Fingernail clippings were collected during Rivas’s autopsy, but DNA testing was not conducted on this evidence. Therefore, additional testing of this evidence has the potential to significantly advance a claim of actual innocence.

¶ 24 First, analysis of the remaining fingerprints on the ceramic mug has the potential to place another individual in contact with the mug that contained Rivas’s money. Analysis of a fingerprint on the telephone showed that an individual besides defendant or Rivas had contact with the telephone. Analysis of the remaining fingerprints on the mug could connect it to the individual who touched the telephone or another individual. Overall, this evidence would call into question the State’s residential burglary case and motivation for the murder. This evidence also would support to defendant’s testimony that he only had incidental contact with the ceramic mug while he cleaned Rivas’s house.

¶ 25 Second, DNA analysis of the fingernail clippings could place another individual at the scene near the time of the murder. While the evidence showed that Rivas was attacked from behind, it did not rule out the possibility that Rivas might have made incidental contact with the

attacker and thereby collected the attacker's DNA on his fingernails. Evidence of another individual's DNA on Rivas's fingernails, therefore, would bolster defendant's alibi defense.

¶ 26 Finally, DNA testing on the gloves discovered near Rivas's body has a similar potential to place another individual at the scene. The combination of a DNA profile that did not match defendant or Rivas and the location of the gloves near Rivas's body could give rise to the inference that another individual committed the murder while wearing the gloves.

¶ 27 While each of these pieces of evidence in isolation does not have the potential to "significantly advance" an actual innocence claim, we find that together this evidence could significantly advance defendant's claim. Thus, we conclude that the circuit court erred in dismissing defendant's motion.

¶ 28 **CONCLUSION**

¶ 29 The judgment of the circuit court of Kankakee County is reversed and remanded.

¶ 30 Reversed and remanded.