2018 IL App (1st) 160037-U

SIXTH DIVISION
DECEMBER 31, 2018

No. 1-16-0037

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 04 CR 24823
	)	
BOBBY BALL,	)	Honorable
	)	Arthur F. Hill,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's postconviction motion for additional DNA testing of certain trial evidence was properly denied, as he could not establish that the requested testing could result in evidence materially relevant to his claim of innocence.

¶ 2 The circuit court of Cook County denied defendant's post-conviction motion seeking additional DNA testing of trial evidence, pursuant to section 116-3 of the Code of Criminal Procedure of 1963 (Code). 725 ILCS 5/116-3 (West 2014). For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 Defendant was charged with several offenses, including first-degree murder and home invasion, in connection with a September 2004 incident that resulted in the shooting death of Michael Wilkins, Sr. (the victim). Before trial, defendant moved to suppress incriminating statements that he made to law enforcement officials, including a videotaped statement. Following a hearing, the motion to suppress was denied.

¶ 5 Defendant's bench trial commenced in February 2008. The State's witnesses included Shevon Anderson (Anderson), who was defendant's girlfriend at the time of the incident. Anderson testified that in mid-September 2004, defendant told her that he "might be coming into money soon" by participating in a "robbery" with someone named Tony. On September 20, 2004, defendant informed her that the robbery would occur the next morning.

¶ 6 On the morning of September 21, 2004, defendant left Anderson's home with her van. Later that morning, he telephoned her and told her that the robbery "didn't go right." Defendant returned to Anderson's home and explained what had happened. He told Anderson that he and "other robbers" had entered the victim's home and restrained the victim's wife and children. The victim engaged in a physical "struggle" with the robbers, defendant was knocked down, and the victim "tried to reach for a gun." Defendant told Anderson "that a gun went off." Anderson and defendant decided to report her van as stolen.

¶ 7 Later that day, police arrived at Anderson's home and she later went to the police station, where she gave a written statement. At trial, Anderson stated that she did not feel free to leave the police station, and that police told her she could be charged as an accessory to the crime. However, she acknowledged that she signed a statement acknowledging that she was not threatened and that she gave the statement voluntarily.

¶ 8 Janet Swanagan Wilkins (Janet) testified that she was married to the victim and that they had three children: Michael Jr. (Mike), and twins named Malik and Mykzia. Janet testified that her husband worked as a manager at a company called Elite Mortgage.

¶ 9 At approximately 8 a.m. on September 21, 2004, Janet was home with her children when two men entered her house, pointed guns at the twins, and told Janet to be quiet. One of the intruders wore an "FBI" hat and another wore a "black doo rag." A third intruder entered the home, put a roll of duct tape on a table, and asked Janet where "the money" was located. After Janet told them that there was no money in the home, the men taped the twins' mouths shut.

¶ 10 Janet heard her husband (the victim) come upstairs from the basement and begin "struggling with the guy with the FBI hat on." Two of the intruders beat the victim, hitting his head with a gun and a lamp. The man wearing the "doo rag" hit Janet on the head with a gun. Before the intruders left, the man wearing the FBI hat pointed a gun at her husband and shot him. On September 22, 2004, Janet identified defendant in a police lineup as the man who shot her husband. At trial, Janet also identified defendant as the man who wore the FBI hat.

¶ 11 The victim's oldest child, Mike,[1] testified that on the morning of the shooting, he was in the bathroom when he heard something unusual in the living room. When he came out, a man pointed a gun at him and told him to sit down in the living room, where he saw his mother and twin siblings. Mike testified that there were three armed intruders, and that they used duct tape to restrain him and his siblings. Mike's father came upstairs from the basement and began fighting the intruders. Mike's father was hit with a gun and a lamp, and his mother was hit with a gun. After two of the intruders left, the third intruder shot Mike's father. Mike testified that the shooter was wearing "a regular black hat with FBI on it and a stocking cap under it." Mike

[1] Mike was 11 years old at the time of trial and 7 years old at the time of his father's shooting.

subsequently identified defendant in a police lineup as the man who shot his father. Mike also identified defendant at trial.

¶ 12 Forensic investigator Stephen Strzepek of the Chicago Police Department testified that he took photographs and collected evidence at the crime scene. He testified that a "baseball type cap with lettering FBI on the front" was recovered from the living room.

¶ 13 The State also called Special Agent Jeffrey Sisto of the United States Department of Justice, Bureau of Alcohol, Tobacco and Firearms. In 2004, Agent Sisto knew defendant as a confidential informant. At Agent Sisto's direction, defendant "wore electronic equipment" during undercover purchases of narcotics. Agent Sisto testified that defendant sometimes wore a black baseball hat with the monogrammed letters "FBI." On September 21, 2004, Agent Sisto had a telephone conversation with defendant, during which defendant said that his van was stolen and that it had "possibly been used in a home invasion." Defendant told Agent Sisto that "his father had called him and told him that he saw [defendant's] van on TV as being used in a home invasion." Defendant also told Agent Sisto that his van had been stolen previously and that "Perhaps, the people who stole it that time had made a copy of the car keys." Defendant expressed concern that police might find his fingerprints in the van; he requested that Agent Sisto contact Chicago police to ask them "what was happening with the home invasion." Agent Sisto testified that, during the telephone conversation, defendant seemed "very unsure of himself, very nervous, just not himself." Agent Sisto contacted Chicago police and spoke with Detective Regina Blackledge, who was investigating the victim's homicide.

¶ 14 Detective Blackledge testified that, during her investigation, she learned that Anderson was the owner of a van found parked in front of the victim's home. Detective Blackledge and other police went to Anderson's residence, where Anderson agreed to an interview at the police

station. Anderson called defendant, who indicated that he was en route to Anderson's residence. As Anderson was being transported to the police station, Detective Blackledge and other detectives waited for defendant's arrival at Anderson's residence. After defendant arrived, police requested to interview him at the police station, and he agreed.

¶ 15 Detective Blackledge conducted separate interviews of Anderson and defendant. She noticed inconsistencies between Anderson and defendant's versions of events in their initial interviews, and so she conducted additional interviews. In a subsequent interview, defendant initially denied knowing the victim, but later stated that someone named Tony Collins (Tony) had called him and informed him that the victim had died. When confronted with this inconsistency, defendant admitted that he had been at the victim's house during the homicide. At that point, Detective Blackledge advised defendant of his *Miranda* rights.

¶ 16 Defendant proceeded to tell Detective Blackledge that he had been contacted by Tony several weeks earlier. At that time, Tony informed defendant that Tony and the victim had a "verbal altercation" at the mortgage company where they both worked. Tony told defendant that he wanted "to get back at" the victim, and then solicited defendant's help to rob the victim of $75,000, promising defendant a "take of the proceeds." Defendant learned that an individual named Vincent and two of Tony's cousins would also participate in the robbery.

¶ 17 Defendant told Detective Blackledge that he and the other robbers met at Tony's residence on the morning of September 21, 2004. Tony gave the defendant a 9-millimeter handgun. The men then traveled in separate vehicles to the Wilkins' residence and parked their vehicles across the street. Defendant recalled that he was wearing a "stocking cap" over the top of his face, an FBI hat, a flannel shirt, and sweatpants.

¶ 18 Defendant told Detective Blackledge that, after entering the home, Vincent and Tony's cousin used tape to restrain the victim's wife and children. Defendant encountered the victim and demanded money; the victim replied that he did not have any, and began fighting with defendant. Eventually, the victim broke free and reached for something on top of a cabinet. At that point, Vincent and Tony's cousin left the home, while defendant remained. Defendant attempted to fire his handgun at the victim, but the weapon initially "jammed." After pulling the "slide" on the weapon repeatedly, defendant fired in the victim's direction and then fled on foot. Defendant later disposed of the handgun underneath a dumpster in an alley. He then called Anderson and told her that the robbery did not go as planned. After he arrived home, defendant placed his clothes in a garbage bag and burned them in an industrial area in Chicago.

¶ 19 Detective Blackledge testified that defendant subsequently directed police to a dumpster, under which they found and recovered the firearm.

¶ 20 Detective Scott Rotkovich testified that, on September 23, 2004, he searched the crime scene and discovered a fired bullet on the floor in the area of the home where the victim had collapsed. The bullet was recovered by an evidence technician. At Detective Blackledge's instruction, Detective Rotkovich also searched an area a few blocks from the crime scene, where he found some discarded clothing, including a blue and white flannel shirt and black gloves.

¶ 21 Assistant State's Attorney Guy Lisuzzo testified that on September 22, 2004, he spoke with defendant. After he waived his *Miranda* rights, and signed a consent form, defendant gave a videotaped statement, in the presence of Detective Blackledge and ASA Lisuzzo. The videotaped statement was played at trial.

¶ 22 A transcript of the videotaped statement was admitted into evidence and is included in the record on appeal. In that statement, the defendant indicated that Tony described a workplace

"altercation" he had with the victim. Tony told defendant that the victim kept "75,000 in cash" in a safe in his house, and they discussed a plan to rob him. Tony told defendant that a person named Vincent and two of Tony's "cousins" would help in the robbery. Defendant stated that, on the morning of September 21, 2004, he drove Anderson's van to Tony's home, where Tony gave him a 9 millimeter firearm. Vincent later arrived and they went to another location, where Vincent acquired a .38 caliber firearm.

¶ 23 Defendant recalled that he was wearing a hat with "FBI on it." Underneath the hat, he wore a "stocking cap." Defendant and the other robbers arrived at the victim's home in separate vehicles, and they waited and observed the house for several minutes. Defendant, Vincent, and one of the cousins entered the house, while the other cousin stayed behind as a "look-out." Defendant stated that he displayed his gun to the victim's wife and demanded "the money," but the victim's wife said "we don't have any money here." Vincent and the cousin tied up the victim's wife and children with duct tape, as defendant checked to see if anyone else was in the home.

¶ 24 Defendant heard someone walking and saw the victim come "out of a doorway." Defendant pointed his gun at the victim and asked him for "the money." According to defendant, the victim moved toward the front door and "started wrestling" with Vincent as he was "trying to get out." Defendant recalled that Vincent was "hitting [victim] in the face with the gun" and then the victim and Vincent struggled for the gun.

¶ 25 The victim broke free of Vincent, ran to a cabinet, and "reached for the top of the cabinet." Defendant believed the victim was reaching for a gun, because Tony had previously told defendant that the victim kept a gun in the home. Defendant pointed his gun at the victim and tried to fire it but "it jammed." Defendant pulled "the slide on the gun" a number of times,

and eventually unjammed the gun. Defendant shot in the victim's direction, and then ran out of the house.

¶ 26 Also in the videotaped statement, defendant recalled that after the shooting he entered an alley, "switched my clothes around and I took off my flannel and balled it up." He also stated that he threw his gun under a dumpster. He then called Anderson, and told her that "things didn't go right" and that he had shot someone. He told Anderson "that the guy who we [were] robbing, Michael, was fighting back" and that defendant "shot the guy" although he "didn't want it to happen that way." Defendant later went to Anderson's home and changed clothes. Defendant told police that he put the clothes that he wore during the shooting into a bag, and "tossed the bag" near a factory. Defendant acknowledged that he later told police where to find the bag of clothes, as well as the dumpster where he deposited his gun.

¶ 27 The State also called Jaime Gibson, a forensic scientist with the Illinois State Police. Gibson testified that blood swabbed from the recovered firearm matched the DNA profile of the victim. Gibson also testified that a blood stain from the flannel shirt matched the victim.

¶ 28 Gibson also testified that DNA testing of the FBI hat revealed a "mixture of profiles" from at least three individuals. Defendant could not be excluded from that mixture; Gibson acknowledged that "[a]pproximately one in 2 blacks, one in 4 whites, and one in 2 unrelated Hispanic individuals could not be excluded" from that DNA mixture. The State also presented forensic evidence that a fired bullet recovered from the crime scene could not be excluded as having been discharged from the firearm recovered from the dumpster.

¶ 29 Defendant did not testify at trial, and the defense presented no other evidence. The trial court found defendant guilty of home invasion and one count of felony murder. Defendant was sentenced to 55 years' imprisonment.

¶ 30 On direct appeal, defendant argued that the trial court erred in denying his motion to suppress his statements to police, and that their admission deprived him of a fair trial. We rejected those arguments and affirmed defendant's conviction. *People v. Ball*, 1-08-1892 (December 28, 2010) (unpublished order under Illinois Supreme Court Rule 23).

¶ 31 In May 2015, defendant filed a *pro se* "motion to allow DNA Testing" of the FBI hat, pursuant to section 116-3 of the Code of Criminal Procedure of 1963 (Code). 725 ILCS 5/116-3 (West 2014). Defendant acknowledged that, at trial, the State offered evidence that defendant "could not be excluded as a contributor of wearer DNA" for the hat. The motion requested additional testing "utilizing deoxyribonucleic acid, short tandem repeat analysis, which is a superior form of DNA testing compared to the testing used by the State prior to trial." The motion claimed that such testing "has the potential to produce new noncumulative evidence materially relevant to the defendant's assertion [of] actual innocence." The motion contended that additional DNA testing could "eliminate defendant as a contributor of wearers' DNA" found on the hat and "possibly identify another perpetrator." Defendant urged that such results would be critical to his case, citing the trial testimony that the victim's shooter wore an FBI hat.

¶ 32 The State responded by filing a motion to dismiss defendant's motion, arguing that defendant filed to satisfy the requisite criteria under section 116-3. The State's motion argued that "there are no new advancements that could provide new non-cumulative evidence as required under the statute." The State explained that, when the FBI hat was tested in 2005, the Illinois State Police Crime Lab used the "Profiler Plus/Cofiler" (Pro/Co) kit for DNA testing, and that, currently, the crime lab uses the "AmpF/STR Identifiler Plus PCR Amplification Kit (ID Plus). The State argued that the "chemistry is different between the two kits however the technology remains the same." The State urged that the newer ID Plus kit would not provide new

information as it is "extremely sensitive." The State explained: "In mixtures of more than two people, it becomes difficult to determine how many contributors are in the sample. *** Since we are dealing with a mixture of at least three people in this case, the ID Plus kit would not be successful in providing any new information." The State urged that defendant's motion must be denied "since current DNA testing cannot produce new non-cumulative evidence that would tend to significantly advance a claim of actual innocence."

¶ 33 On October 26, 2015, the trial court conducted a hearing on the State's motion to dismiss. The State again argued that "Using the new [DNA testing] kit would not be successful because it is so sensitive that mixtures of two or more, it's too much information for the kit to interpret." The State contended that "there are no new advances at this time in technology to provide further information" to warrant further testing.

¶ 34 Defendant, arguing *pro se*, stated that he sought: an "STR test" and "[w]hat this test will do is explain and give for exclusion purposes and identification purposes." Defendant additionally argued that the State "failed to establish the chain of custody on this piece of evidence" and suggested that the State engaged in "prosecutorial misconduct *** by allowing their witnesses to commit perjury." Defendant claimed to have "exhibits and records that this [FBI] hat was in four different locations at the crime scene" and that it was "never inventoried from the crime scene."

¶ 35 The court interjected at this point and informed defendant that he was "arguing against [his] own position" with respect to chain of custody for purposes of a section 116-3 motion:

> "THE COURT: *** Can I jump in? You're challenging the chain of custody of the hat.
>
> DEFENDANT: Yes, sir.

> THE COURT: And is that one of the things that you have to establish in order to be able to have the testing that you're asking for that, you're kind of arguing against your own position here, that in fact, if we test the hat, according to you, we can't rely on any results, because you're saying you're challenging the chain of custody of the hat.
>
> DEFENDANT: Yes, sir. And – yes, I am. And by me establishing the chain of custody, I'm asking that the court remove this piece of evidence from the case by its not being a chain of custody for the hat. ***"

¶ 36 The State's Attorney then argued that, since chain of custody is "one of the elements" required by section 116-3, defendant could not seek further DNA testing if he disputed the chain of custody of the FBI hat. When the court asked defendant if he understood this argument, defendant stated: "I thought if I can establish that it was never a chain of custody, this piece of evidence shouldn't have been used in the trial in the git-go." The trial court told defendant that this was a "whole separate issue" from a motion for testing under section 116-3. The court then granted the State's motion to dismiss defendant's section 116-3 motion.

¶ 37 On November 17, 2015, defendant filed a timely notice of appeal. Accordingly, we have jurisdiction. Ill. S. Ct. R. 606(b) (eff. Dec. 11, 2014).

¶ 38 ANALYSIS

¶ 39 On appeal, defendant[2] argues that the trial court erred in dismissing his motion for further DNA testing of the FBI hat. He claims that he satisfied each of the statutory requirements under

[2] Whereas defendant argued his section 116-3 motion *pro se* in the trial court, in this appeal defendant is represented by the Office of the State Appellate Defender.

section 116-3 of the Code, including the "prima facie case" requirements of subsection 116-3(b), as he established "that both identity was at issue at trial and that a sufficient chain of custody existed." He acknowledges his remarks at oral argument referencing "chain of custody," but he now asserts that "the substance of his claim did not actually challenge a chain of custody of the hat" as that term is used in section 116-3(b). Rather, he claims that his remarks concerned uncertainty over "where the hat was allegedly recovered" but did not allege improper handling of the hat after it was recovered. He also claims that he meets the requirements of section 116-3(c), because new DNA testing of the FBI hat "has the potential to produce new, noncumulative evidence that would significantly advance his claim of innocence." Specifically, he claims that new testing with the State's current DNA testing kit would produce "a more confident conclusion *** as to whether or not [he] could be excluded as a possible source of the DNA found on the FBI hat" because the current kit used by the crime lab examines 15 "loci," or genetic markers, whereas the older kit tested "only 13 loci." He argues that new testing could potentially exclude him as a source of DNA from the FBI hat, conflicting with the State's eyewitnesses' identification testimony. He argues this would "substantially advance" his claim of innocence. Specifically, he claims that test results excluding him as a source of DNA on the FBI hat would call into question *all* of the State's evidence against him, as there was "no other direct, objective evidence" linking him to the crime.

¶ 40 The State's response asserts multiple reasons to affirm the trial court, based on defendant's failure to meet several requirements of a motion under section 116-3. Among these, the State urges that defendant failed to show that the requested DNA testing "was not scientifically available" at the time of his trial, or that it "provides a reasonable likelihood of more probative results," as required by subsection (a)(2). 725 ILCS 5/116-3(a)(2) (West 2014).

The State also asserts that defendant does not meet the "prima facie case" requirements of subsection 116-3(b), as he fails to show that "identity was the issue" during the trial, or that the FBI hat has been subject to the requisite "chain of custody." 725 ILCS 5/116-3(b) (West 2014).

¶ 41 Separately, the State urges that, given the other overwhelming evidence of his guilt, defendant cannot show that additional DNA testing of the FBI hat could "produce new, noncumulative evidence" that is "materially relevant" to his claim of actual innocence, as required by section 116-3(c)(1). 725 ILCS 5/116-3(c)(1) (West 2014). The State argues that the trial testimony regarding the DNA testing of the FBI hat "was only a small portion of the evidence amassed against defendant" at trial and that the other evidence of guilt was "overwhelming." The State thus submits that, even if new testing "could show that defendant's DNA was not found on the FBI hat" this would not be materially relevant to a claim of innocence, in light of the totality of the trial evidence.

¶ 42 "Section 116-3 of the Code delineates the prerequisites a defendant must meet in order to establish that he is entitled to, *inter alia*, postconviction forensic DNA testing. [Citation.]" *People v. Smith*, 2014 IL App (1st) 113265, ¶ 19. Subsections 116-3(a), (b), and (c) each set forth separate requirements for a successful motion. Pursuant to subsection 116-3(a), a "defendant must first show that his request for forensic testing relates to evidence that was secured in relation to the trial which resulted in his conviction, and that this evidence was (1) not subject to the testing which is now requested at the time of trial, or (2) although previously subjected to testing, that it can now be subjected to additional testing utilizing a method that was not scientifically available at the time of trial. 725 ILCS 5/116-3(a)(1),(2) (West 2010)." *Smith*, 2014 IL App (1st) 113265, ¶ 19.[3]

[3] As the FBI hat at issue in this case was previously subjected to DNA testing, subsection (a)(2), rather than (a)(1), is applicable to defendant's motion.

¶ 43 Subsection 116-3(b) additionally requires the defendant to "present a prima facie case" that: "(1) identity was the issue in the trial" that resulted in his 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 respect." 725 ILCS 5/116-3(b) (West 2014). In addition to the foregoing requirements, subsection 116-3(c) provides that the court shall allow the requested testing, if it additionally determines that: (1) "the result of the testing has the scientific potential to produce new, noncumulative evidence" that is "materially relevant to the defendant's assertion of actual innocence *** even though the results may not completely exonerate the defendant"; and (2) the requested testing is "generally accepted within the relevant scientific community." 725 ILCS 5/116-3(c) (West 2014).

¶ 44 A ruling on a motion for postconviction testing under section 116-3 is reviewed *de novo*. *People v. Stoecker*, 2014 IL 115756, ¶ 21. Further, we note that we may affirm the denial of a section 116-3 motion on any basis warranted by the record, even if not relied on by the trial court. *People v. Urioste*, 316 Ill. App. 3d 307, 311 (2000); see also *People v. Perkins*, 2018 IL App 133981, ¶ 53 ("We may affirm the trial court when correct for any reason appearing in the record. [Citation.]").

¶ 45 Although the parties' briefs discuss multiple statutory requirements of section 116-3, we need not discuss all of them in order to affirm the trial court. Rather, we find it apparent from the record that dismissal was appropriate because defendant cannot satisfy subsection 116-3(c). That is, given the voluminous evidence of defendant's guilt, further testing of the FBI hat could not prove "materially relevant" or significantly advance his claim of innocence.

¶ 46 Our supreme court has instructed that "evidence which is 'materially relevant' to a defendant's claim of actual innocence is simply evidence which tends to significantly advance

that claim." *People v. Savory*, 197 Ill. 2d 203, 213 (2001). Whether evidence is materially relevant "requires a consideration of the evidence introduced at trial, as well as an assessment of the evidence defendant is seeking to test." *Id.* at 215. "DNA evidence that plays a minor role and is a collateral issue is not materially relevant because it does not significantly advance a claim of actual innocence. [Citation.]" *People v. Gecht*, 386 Ill. App. 3d 578, 582 (2008).

¶ 47 We find that the analysis in *Savory* is analogous. In that case, our supreme court affirmed the denial of defendant's request for additional testing of bloodstained trousers, finding this evidence was not "materially relevant" in light of the other evidence at his murder trial. Our supreme court explained:

> "Our examination of the record shows that the testimony regarding the possible source of the bloodstain on the pair of trousers was only a minor part of the State's evidence in this case. A far greater portion of the State's case consisted of defendant's knowledge of certain features of the crime scene *** and of defendant's statements *** that he had been at the victims' homes the day of the murders and had cut one or both of the victims. *** Notably, it was not until rebuttal argument that the prosecution mentioned the evidence regarding the bloodstained trousers. ***[T]he bloodstain evidence was essentially a collateral issue at trial and was not central to the State's evidence of guilt. Under these circumstances, a test result favorable to defendant would not significantly advance his claim of actual innocence, but would only

> exclude one relatively minor item from the evidence of guilt marshaled against him by the State." *Id*. at 216.

¶ 48 The situation here is similar. In the instant case, the State's forensic evidence regarding the FBI hat consisted of Gibson's testimony that defendant could not be excluded as a contributor to the mixture of DNA on the hat. Clearly, that evidence was of relatively minor importance to the State's overall case, which included identification testimony from two eyewitnesses to the home invasion, Anderson's testimony about defendant's actions before and after the failed robbery, and defendant's numerous incriminating statements to police detailing the planning of the robbery and his actions before, during, and after the shooting.

¶ 49 Defendant suggests that new DNA testing of the FBI hat could "have a significant impact on the case because it would call the State's witness identifications of him into question." We disagree. We acknowledge that both the victim's wife and his son testified that defendant wore an FBI hat when he shot the victim. However, even assuming that new DNA test results might cast doubt on that particular detail of their testimony, it would not require a fact finder to reject the other aspects of their testimony, including their identification of defendant.[4]

¶ 50 Moreover, even without *any* of the eyewitness testimony, there was ample independent evidence of defendant's guilt, including defendant's self-incriminating statements. Defendant's videotaped statement described in great detail the origin of the robbery scheme, how he and others planned and carried out the home invasion, how he shot at the victim after his gun initially "jammed," and how he disposed of that gun and his clothing. Further, the State introduced physical evidence corroborating that confession, including that defendant led them to a gun with

[4] We also note, as the State's brief points out, that the State introduced evidence that defendant was wearing a "stocking cap" beneath the FBI hat at the time of the crime. Defendant does not address how that fact might affect the ability to detect DNA from the wearer (or to exclude defendant as having worn the hat), despite any advances in current DNA testing technology.

the victim's blood on it. Given this overwhelming evidence, we cannot find that new testing of the FBI hat would have any material impact on a claim of innocence.

¶ 51 On this point, we acknowledge defendant's reliance on *People v. Johnson*, 205 Ill. 2d 381 (2002), for the proposition "that a defendant is entitled to additional DNA testing even where the evidence against him is strong so long as a favorable result would significantly advance his claim of innocence." Although *Johnson* allowed new testing pursuant to section 116-3 in a case where there was "strong" trial evidence, that case is clearly distinguishable.

¶ 52 The defendant in *Johnson* was convicted of sexually assaulting and stabbing one victim (Payne), as well as killing another victim. The State's evidence included Payne's identification of defendant in a lineup, as well as evidence that police found "head hairs similar to Payne's hair," bloodstains, and a knife in a vehicle owned by defendant's stepfather. *Id.* at 386. In a postconviction petition,[5] defendant sought DNA testing of a "rape kit" from Payne's hospital examination, contending that it could prove his innocence. *Id*. at 390-91.

¶ 53 After discussing section 116-3 and *Savory*, our supreme court concluded that the *Johnson* defendant was entitled to the requested testing, explaining:

> "Unlike evidence about the source of the bloodstain in *Savory*, evidence about the source of genetic material in the [rape] kit was never presented at trial. That is, the defendant here does not seek merely to impeach the State's evidence. Instead he seeks to present, for the first time, evidence about the genetic identity of Payne's assailant. Further, unlike the defendant in *Savory*, the defendant here never made damning admissions placing himself at

[5] Section 116-3 was not yet in effect when the *Johnson* defendant filed the petition seeking the testing, although it was in effect by the time the trial court denied his request. *Johnson*, 205 Ill. 2d at 392.

> the crime scene. The State presented a strong, but largely circumstantial case; the only direct evidence of the defendant's guilt came from Payne's identification." *Id.* at 396-97.

Our supreme court reasoned that "[a] favorable result on a DNA test of the [rape] kit would significantly advance the defendant's claim" of innocence, and thus the trial court erred in refusing to allow the requested testing. *Id.* at 397.

¶ 54 Defendant cites *Johnson* as support for his request for DNA testing under section 116-3. However, this case presents obvious, major factual differences from *Johnson.* There, the State's case was "strong, but largely circumstantial." *Id.* at 396. In this case, there were two eyewitnesses who identified defendant as the shooter. Further, whereas *Johnson* noted the lack of "damning admissions placing [defendant] at the crime scene," the opposite is true in this case, given defendant's numerous incriminating statements. Finally, whereas *Johnson* concerned evidence that had never been previously tested for DNA, the FBI hat in this case was already subjected to DNA testing. Thus, the facts of this case are much more similar to *Savory* than to *Johnson.* That is, given the relatively limited role of the FBI hat within the totality of the evidence amassed against him, defendant cannot establish that the requested testing could be "materially relevant" to a claim of innocence.

¶ 55 As defendant cannot satisfy the "materially relevant" requirement of subsection 116-3(c), his motion for testing was properly denied. Accordingly, we need not discuss the parties' remaining arguments regarding other provisions of the section 116-3.

¶ 56 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 57 Affirmed.