2019 IL App (1st) 163142-U

No. 1-16-3142

Order filed May 10, 2019

Fifth Division

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 17061
	)	
MYCHAL THOMPSON,	)	Honorable
	)	Timothy J. Joyce,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 *Held*: Circuit court did not err in denying defendant's petition for forensic testing as the ballistic database comparison he seeks would not significantly advance a claim of actual innocence.

¶ 2 Following a 2002 jury trial, defendant Mychal Thompson[1] was convicted of first degree murder and sentenced to 50 years' imprisonment. We affirmed on direct appeal. *People v. Thompson*, No. 1-02-1964 (2004) (unpublished order under Supreme Court Rule 23). Following a series of unsuccessful collateral challenges, defendant filed a 2015 petition for forensic testing – comparison of the fatal bullet here to the Integrated Ballistic Identification System (IBIS) database of ballistic or firearms evidence – under section 116-3 of the Code of Criminal Procedure. 725 ILCS 5/116-3 (West 2016). The circuit court denied the petition and defendant appeals, contending he sufficiently set forth all the elements of a section 116-3 claim. For the following reasons, we affirm.

¶ 3 Defendant and codefendants Jamal Harmon, Eugene Wiseman, and Craig Newton were charged with first degree murder in the shooting death of Araceli Zizumbo on June 19, 1995. The State alleged that they intentionally killed Zizumbo (720 ILCS 5/9-1(a)(1) (West 2014)) or shot her knowing that they created a strong probability of her death or great bodily harm (720 ILCS 5/9-1(a)(1) (West 2014)). Defendant was convicted in a 1997 jury trial, but we reversed and remanded for retrial due to improper prosecutorial comments. *People v. Thompson*, 313 Ill. App. 3d 510 (2000).

¶ 4 As set forth in our 2000 decision, the evidence in the 1997 trial was that defendant, a gang leader, ordered codefendants and other gang members to go to Marquette Park in Chicago to shoot members of a rival gang in retaliation for an attack by that gang on members of defendant's gang in the park the previous day. Defendant provided codefendants firearms

[1] Defendant's name appears as both "Mychal" and "Michael" in the record and prior proceedings in both this court and the trial court. We will use "Mychal" as that is how defendant signed his name on the relevant pleadings referenced in this appeal.

including an Uzi pistol and accompanied them to the park but did not remain in the park for the shooting. In the park, codefendants fired towards a bridge over a pond with several people on it, who they believed to be rival gang members. Zizumbo was fatally struck in the back by a bullet as she stood with friends, including Blanca Morales, near the bridge looking at the pond. A bullet was removed from Zizumbo's body, and codefendant Newton later led police to an Uzi pistol. Forensic scientist Ernest Warner testified by stipulation that the fatal bullet was unsuitable for comparison but could have been fired from the Uzi. Defendant did not testify or present defense witnesses in his 1997 trial.

¶ 5 In our 2000 opinion reversing the 1997 conviction and remanding for a new trial due to improper closing arguments, we found the evidence of defendant's guilt to be sufficient to remand without risk of double jeopardy. *Thompson*, 313 Ill. App. 3d at 520. In doing so, we rejected his contention "that he could not be proved guilty beyond a reasonable doubt of first degree murder on an accountability and transferred intent theory because the State failed to identify the shooter or the target. Defendant points out that there was no testimony as to who actually shot the victim." *Id*. at 516. We also rejected his argument that he could not be held accountable because "the State did not prove which of the four [codefendants and gang member Rickey] actually fired the fatal bullet," noting that the State "does not have to establish which member of a group fired the fatal bullet, as long as everyone in the group is accountable for each other's actions." *Id*. at 519. We found it irrelevant that defendant was not present for the shooting "as the evidence clearly established that defendant actively participated in the planning of the offense, provided his codefendants with the weapon that fired the fatal bullet, and drove his

codefendants to the scene of the offense." *Id*. at 518. Nevertheless, we remanded due to prosecutorial misconduct in closing arguments. *Id*. at 514-15, 521.

¶ 6 On remand, at defendant's 2002 trial, gang members Eddie Frazier and Derrick Johnson testified that they were attacked by rival gang members in Marquette Park on June 18, 1995. The next day, they and other gang members were at defendant's home. Defendant was a leader of their gang. Frazier heard defendant tell codefendant Wiseman that they should "take care of some business," and saw that Wiseman had a .38-caliber pistol. Johnson heard defendant tell codefendants Harmon and Wiseman to go to the park and "spray" or shoot the rival gang members they would find there.

¶ 7 Johnson saw defendant go upstairs with codefendants Harmon and Newton and return a short time later with Harmon carrying the Uzi and defendant carrying the black gym bag. Johnson then saw defendant leave with Wiseman, "Ricky," and Harmon in one car, with Newton and fellow gang member April Alston leaving in another car at the same time. Defendant returned home with Alston about ten minutes later, and the others returned a short time later in the other car, with Harmon carrying a black gym bag into defendant's home. Defendant later told Johnson that "he took care of everything." Frazier and Johnson both testified to having seen an Uzi pistol and black gym bag in defendant's upstairs bedroom before June 1995.

¶ 8 April Alston testified that she was at defendant's home on June 19, 1995, with fellow gang members when she saw defendant leaving his home with Wiseman, Newton, and Harmon, the latter carrying a black gym bag that he had brought down from upstairs in defendant's home. Defendant put the bag in Newton's car and told Alston to join them and Ricky. They all went in Newton's and Harmon's cars to a location near Marquette Park, and defendant went home with

Alston while the others stayed. On the ride home, defendant told Alston that the others "were going to take care of some business *** in the park" that she should not mention. When the others returned to defendant's home a few minutes later, Harmon brought the black gym bag upstairs in defendant's home.

¶ 9 Eugene Wiseman, former codefendant, testified that he pled "guilty to killing Araceli Zizumbo in this case" in June 1997 and was serving a 25-year prison sentence. Wiseman testified that he could not recall whether he was in a gang or where he was on June 19, 1995. He professed to not recall any answer he had given in a signed stenographic statement on June 27, 1995. An assistant state's attorney (ASA) then testified to the content of Wiseman's signed stenographic statement as substantive evidence. In the statement, Wiseman stated that defendant was a gang leader and discussed with Harmon, in Wiseman's presence, shooting members of a rival gang. Defendant and Harmon went to Marquette Park to determine how to "set up the shooting." When defendant returned, he drove Wiseman, Harmon and "Ricky" to the area of the park. Newton and Alston drove to the park in Newton's car.

¶ 10 According to Wiseman's statement, defendant told Wiseman and the other men to "take care of that," which Wiseman took to mean shooting the rival gang members. Defendant ordered Ricky to stay with Newton's car, ordered Newton to remove a black bag from the car, and then left with Alston in the other car. Newton armed codefendants with guns – including an Uzi – from the black bag. The men then approached a group they believed to consist of rival gang members and fired their guns at the group. Wiseman stated that Harmon fired first. Several gunshots followed, but Wiseman did not know if Harmon or someone else fired the latter shots. Harmon then "shot many times quickly" and Wiseman fired a few times. After the shooting, the

men returned to defendant's home, where Harmon returned the bag of guns "upstairs." Defendant came down, was told about the shooting, and stated he had better hear about the shooting in the newspaper, which Wiseman took to mean that he wanted to know the shooting at the rival gang members had been taken care of.

¶ 11 When asked in his statement if Harmon had "shot first before the" rival gang members, Wiseman agreed. When asked to draw a map of the incident, Wiseman described arrows he drew from the position of the purported rival gang members as depicting when "they ran out and started busting towards Jamal," which he explained meant that they fired towards Harmon.

¶ 12 Blanca Morales testified that she was in Marquette Park on June 19, 1995, with her friends Zizumbo and "Matilda." Morales and Zizumbo were facing a pond in the park, standing near or "beside" a bridge with "a lot of people" on it, when Morales heard about 17 gunshots from behind her. She ducked until the shooting stopped, and then saw that Zizumbo was wounded and bleeding. Morales drove Zizumbo to a hospital.

¶ 13 A physician testified to performing an autopsy on Zizumbo, finding that she died of a single gunshot wound to the back and recovering a spent bullet from her body. A police officer testified that no shell casings were found near the scene in a search area of 300-400 square yards. A police detective testified that codefendant Newton led him to an Uzi pistol.

¶ 14 Forensic firearm expert Aaron Horn testified that test bullets fired from the recovered Uzi in 2002 matched the bullet taken from Zizumbo's body, so that he concluded that the fatal bullet was fired from the Uzi. Horn testified that his supervisor verified his conclusion pursuant to "[s]tandard laboratory procedure." Horn was aware that Warner had found the fatal bullet unsuitable for comparison. However, Horn examined the bullet for himself and found it suitable.

On cross-examination, Horn admitted that "experts can disagree as to their opinions *** regarding firearms identification." On redirect examination, he testified that a finding that a bullet is unsuitable for comparison is not verified.

¶ 15 An ASA testified that, at a police station on June 27, 1995, defendant told her that he drove codefendants to the park knowing what they were going to do but he claimed that he "tried to talk them out of it."

¶ 16 In his defense, defendant testified that he had been a gang leader but was no longer a gang member in 1995. He denied being with codefendants on the evening in question and denied planning or ordering "any kind of hit in Marquette Park." He also presented an alibi: he volunteered at a youth foundation on the day in question and was driving three youths to their homes at the time of the shooting, though he could not recall their names. His testimony was supported by testimony from his fiancée that he was not home that evening until well after the shooting, and by someone from the foundation that he volunteered on the evening in question.

¶ 17 The jury was instructed on first degree murder with accountability and transferred intent: that "defendant or one for whose conduct he is legally responsible" killed Zizumbo with the intent or knowledge that death would result to "Zizumbo or another" or that his actions created a strong probability of death or great bodily harm to "Zizumbo or another." The jury found defendant guilty of first degree murder. The court sentenced him to 50 years' imprisonment.

¶ 18 On direct appeal, defendant contended that the trial evidence was insufficient to convict him due to his alibi evidence. He also contended that various pieces of inculpatory evidence were erroneously admitted, certain allegedly exculpatory evidence was erroneously excluded, the State

made an improper argument regarding his alibi testimony, and the jury should have been instructed on involuntary manslaughter. We affirmed. *Thompson*, No. 1-02-1964, at 38.

¶ 19 In his first postconviction petition, defendant claimed in part that trial counsel was ineffective for failing to object to, or move to further investigate, new evidence presented by the State connecting the murder weapon with the fatal bullet. *People v. Thompson*, 2012 IL App (1st) 073296-U, ¶ 26. Defendant pointed out that, while forensic scientist Horn testified in the 2002 trial that the fatal bullet was fired from the Uzi pistol recovered by police, the parties stipulated in the 1997 trial to Warner's testimony that the fatal bullet was unsuitable for comparison due to its damaged condition but could have been fired from the recovered Uzi. *Id.* ¶¶ 32-34. The circuit court dismissed the petition in 2011, and we affirmed. *Id*. ¶¶ 10, 57.

¶ 20 We found that Warner's "testimony left open the possibility that the fatal bullet could have been fired from the Uzi pistol" and so was not directly contrary to Horn's testimony. *Id*. ¶ 34. We also found that defendant was not prejudiced by trial counsel's failure to seek a continuance to investigate Horn's testimony or call a defense forensic expert to counter Horn, because "counsel challenged Horn's testimony during cross-examination and got him to acknowledge that experts can disagree as to their opinions regarding firearms identification" and "established that Horn and Warner had examined the same fatal bullet, and that Warner had concluded that the bullet was unsuitable for comparison." *Id*. ¶ 35.

¶ 21 Defendant also claimed in his first postconviction petition that trial counsel was ineffective for not calling two occurrence witnesses whose statements to police differed from statements given by codefendants. We found no ineffective assistance because the "discrepancies alleged by defendant *** related to where the witnesses were sitting, where the shooters were

standing, and the color of the clothing worn by the shooters," which defendant did not establish would have probably changed the outcome of the trial. *Id.* ¶ 38.

> "Throughout the trial, defendant *** maintained that he was not present during the shooting and he presented an alibi defense. In addition, the evidence showed that defendant *** did not do the actual shooting. Rather, defendant *** was found guilty of first degree murder under accountability and transferred intent theories. Therefore, trial counsel's decision not to call the occurrence witnesses at issue did not amount to deficient performance as required to support claim of ineffective assistance of counsel where the witnesses' proposed testimony would have been irrelevant to the defense theory that defendant *** was not present during the shooting." *Id.* ¶ 39.

¶ 22 Subsequently, we affirmed the 2012 dismissal of defendant's first petition for relief from judgment, 2013 denial of leave to file a successive postconviction petition, and 2014 dismissal of his second petition for relief from judgment. *People v. Thompson*, No. 1-12-2829 (2014); No. 1-13-4002 (2015); No. 1-15-0771 (2017) (unpublished summary orders under Supreme Court Rule 23).[2]

¶ 23 Defendant filed his *pro se* section 116-3 petition in December 2015, requesting IBIS ballistic testing. He argued that an IBIS search could show a match between the fatal bullet and "a weapon that was used in a crime after defendant was incarcerated" and thus produce "exonerating evidence as the State heavily relied upon the ballistic evidence produced at trial." He also argued that IBIS testing could "determine if [the fatal bullet and the test bullets] would be considered a high-confidence or low-confidence match with each other." Defendant argued

[2] Defendant's appeal from the July 2015 denial of his June 2015 "motion to dismiss charge" and "petition for judicial review" is pending separately. *People v. Thompson*, No. 1-15-2792.

that the expert opinions of State forensic witnesses Warner and Horn "were at odds," and that "[t]here was evidence adduced at trial, that there were shooters at the park, other than petitioner's alleged codefendants who may have committed this crime," including Ricky. He argued that the police report of eyewitnesses "differs dramatically" from codefendants' statements, including differences in the color of clothing and vehicles. He argued that his "defense at trial was that of actual innocense [*sic*], supported by alibi testimony on the night of this crime." He argued that the IBIS database "was not in exist[e]nce, and more importantly, the evidence was not subject to an IBIS search" at the time of his trial.

¶ 24 The State filed a written response to the petition, asserting that the "IBIS database is currently used only for the comparison of cartridge cases, not fired bullets" so that the requested testing "is not a method generally accepted in the relevant scientific community." The State also argued that submitting the fatal bullet to IBIS "would not tend to significantly advance a claim of actual innocence" because defendant was convicted on an accountability basis for planning the shooting and arming codefendants so that "it is not necessary to [show] that he fired any shots, let alone the fatal shot" because "[n]o possible result of IBIS comparisons could produce new non-cumulative evidence materially [relevant] to an assertion of actual innocence."

¶ 25 The State's response was supported by Aaron Horn's attached September 2016 affidavit that he performed the firearms analysis in this case and was "familiar with the current capabilities of" IBIS. He averred the "State Police, currently, are only able to use cartridge cases for comparison purposes in IBIS, and "fired bullets, currently, are not used for comparison purposes, in IBIS, within the Illinois State Police Forensic Science Command; the equipment is not available." Horn averred that "test shots fired by [the recovered] Uzi Pistol were previously

found to be unsuitable for entry into the IBIS database," and that using IBIS "would not further enhance the comparisons already performed between the" fatal bullet and test shots from the Uzi.

¶ 26 At the October 2016 hearing on the petition, defendant represented himself. The court asked how the result of the trial would change if the recovered Uzi did not fire the fatal bullet, in light of the fact that the State never claimed that defendant was one of the shooters. Defendant noted that, at trial, he denied his involvement in the offense and presented an alibi defense. He also noted that he was found guilty on an accountability basis for what codefendants did. He claimed that there were "three groups of shooters in the park on that night" based on discrepancies in the description of shooters between witness accounts in police reports and codefendants' statements.

¶ 27 The court denied the petition for forensic testing, finding that defendant was not presenting a claim of actual innocence as required by the statute (725 ILCS 5/116-3(c)(1)(i) (West 2016)), but rather was reasserting "arguments, well-asserted and well-stated, but that were stated to the jury previously in arguing that there is a reasonable doubt regarding his guilt." The court found that he was convicted not on whether the recovered Uzi fired the fatal bullet but on the evidence of Alton and Johnson implicating defendant as "the moving force" in the shooting.

¶ 28 On appeal, defendant contends that the circuit court erred in denying his petition for forensic testing because he stated a case under section 116-3 for ballistic testing.

¶ 29 Section 116-3 provides that a defendant may make a motion in the circuit court for IBIS testing "on evidence that was secured in relation to the trial *** which resulted in his or her conviction" if the evidence was either (1) not subject at the time of trial to the requested testing, or (2) previously tested but "can be subjected to additional testing utilizing a method that was not

scientifically available at the time of trial that provides a reasonable likelihood of more probative results." 725 ILCS 5/116-3(a) (West 2016). "IBIS serves as a nationwide computerized database for firearms, bullets, and cartridge casings. [Citation.] It compares ballistic signatures on fired bullets and cartridge casings to each other, and can discover links between crimes that otherwise would remain hidden." *People v. Navarro*, 2015 IL App (1st) 131550, ¶ 11.

¶ 30 In order to be granted testing under section 116-3, the defendant must present a *prima facie* case that "identity was the issue" in his trial and that the evidence to be tested has been subject to a sufficient chain of custody. 725 ILCS 5/116-3(b) (West 2016). A presumption that the evidence to be tested has been in the possession of the police or other State agency, as when the court ordered evidence to be preserved, is facially sufficient regarding chain of custody because a defendant cannot be expected to prove a proper chain of custody at the outset when the evidence at issue will have been in the State's safekeeping. *People v. LaPointe*, 2018 IL App (2d) 160432, ¶¶ 40-41.

¶ 31 If the defendant presents a *prima facie* case, then the circuit court shall allow the requested testing upon a determination that, in relevant part, "the result of the testing has the scientific potential to produce new, noncumulative evidence *** materially relevant to the defendant's assertion of actual innocence when the defendant's conviction was the result of a trial, even though the results may not completely exonerate the defendant." 725 ILCS 5/116-3(c)(1)(i) (West 2016). Evidence is materially relevant to a claim of actual innocence if it tends to significantly advance the claim even if it does not by itself exonerate the defendant. *People v. Stoecker*, 2014 IL 115756, ¶ 33. Whether evidence would be materially relevant requires an

evaluation of the trial evidence and the evidence the defendant seeks to acquire through the testing. *Id*. We review *de novo* the disposition of a section 116-3 petition. *Id*. ¶ 21.

¶ 32 Here, the State does not dispute that identity was at issue in defendant's trial, where he presented an alibi defense. Nor does it dispute that defendant has made a *prima facie* case that the fatal bullet, test bullets, and recovered Uzi have been subject to a sufficient chain of custody. Thus, the issue before us is whether the IBIS testing defendant seeks has the potential to produce new, noncumulative evidence materially relevant to his assertion of actual innocence.

¶ 33 Defendant seeks to have the bullet that killed Zizumbo checked against the IBIS database in hopes that such comparison will (1) match the fatal bullet to a bullet in the database other than the recovered Uzi, or (2) show that the fatal bullet does not match a test bullet from the recovered Uzi. He argued in his petition that he presented actual innocence in the form of his alibi defense at trial. He also argued that the desired IBIS testing would support and expand upon evidence of multiple shooters in the park beyond codefendants. He contends that, if someone other than one of his cohorts fired the fatal shot, he cannot be held accountable for that shooting. We find that the court did not err in denying defendant's section 116-3 petition because such testing could not produce evidence materially relevant to a claim of actual innocence.

¶ 34 As stated above, making such a determination requires us to evaluate the trial evidence. At trial, Frazier and Johnson linked an Uzi and a black gym bag to defendant, Wiseman's statement (admitted as substantive evidence) showed that an Uzi from a black bag was used in the shooting in which Zizumbo was killed, and evidence showed that codefendant Newton – linked to the crime by Johnson and Alton's testimony and Wiseman's statement – led police to the recovered Uzi. Moreover, forensic expert Horn testified that he compared bullets fired from

the Uzi to the fatal bullet and found that they matched, and that his supervisor verified his results. Defendant argued in his petition that Horn's testimony was "at odds" with Warner's testimony at his first trial. However, as we found in affirming the dismissal of defendant's first postconviction petition, the testimony of the two firearm examiners was not contradictory because Warner did not rule out that the fatal bullet could have been fired from the Uzi. *Thompson*, 2012 IL App (1st) 073296-U, ¶ 34.

¶ 35 To the extent that defendant's claim of actual innocence in his petition was his alibi defense at trial, *i.e.*, that he was not present and did not direct the shooting because he was driving three unnamed teenagers home at the time, we agree with the circuit court in denying the petition that defendant was not raising a claim of actual innocence but attempting to relitigate rejected claims. Defendant's alibi defense was presented to the jury, and rejected by the jury, in his 2002 trial. The IBIS testing he seeks would not strengthen his alibi one iota.

¶ 36 That said, defendant's petition also noted that he was convicted on an accountability basis, and he contends that IBIS testing could show that the recovered Uzi did not kill Zizumbo in hopes of showing that someone other than a person for whom he was accountable killed Zizumbo.

¶ 37 Defendant was convicted of Zizumbo's murder because of the evidence that he directed and assisted codefendants in shooting people in the park that he and they believed to be rival gang members, in retaliation for an attack by rival gang members the previous day. Even if IBIS testing matched the fatal bullet to a gun other than the Uzi, it would not show who fired the fatal bullet. This new evidence would not disprove that a gun used by a codefendant or Ricky fired that fatal bullet. All it would prove is that the Uzi did not fire the bullet. Had one of the other

guns used by codefendants killed Zizumbo but not been recovered, that would not change the testimony of Frazier, Johnson, or Alton, nor Wiseman's statement, nor defendant's statement to an ASA that he knew what codefendants were going to do in the park when he drove them to the park. As we noted in our 2000 decision, defendant could properly be found guilty under theories of accountability and transferred intent even where the State failed to identify the shooter.[3]

¶ 38 Further, in defendant's petition, he referred to Ricky as a person for whom he is not accountable and raised the specter of "three groups of shooters in the park on that night" based on discrepancies in witness accounts in police reports. However, the fact that Ricky was not a named codefendant does not render defendant not accountable for his actions, where Johnson and Alton identified Ricky as a fellow gang member and placed Ricky in the park with codefendants. As to the presence of other shooters in the park besides Ricky and codefendants, the police reports with the witnesses' accounts were not entered as trial evidence and we rejected a similar argument in affirming the dismissal of defendant's first postconviction petition, finding such witnesses' descriptions were unlikely to change the outcome of his trial. *Thompson*, 2012 IL App (1st) 073296-U, ¶¶ 38-39. As we stated above regarding his alibi defense, we agree with the circuit court that defendant was not raising a claim of actual innocence in his petition but attempting to relitigate already-rejected claims.

¶ 39 Only one piece of evidence in defendant's trial raises the possibility of other shooters in the park that night: Wiseman's statement, in which he made an offhand reference to "they" shooting at Harmon after Harmon had shot at the group he and Wiseman believed to be rival

[3] Notably, the jury in defendant's 1997 trial found him guilty despite the absence of evidence establishing that the recovered Uzi fired the fatal bullet. However, the jury also did not hear defendant's alibi defense.

gang members. However, even accepting *arguendo* on this vague evidence that the rival group fired back, that is not the only piece of evidence on the issue of who shot Zizumbo. Morales's testimony established that the gunshots she heard came from behind her, not from the direction of the bridge "beside" her with the group of alleged rival gang members on it. Morales's account that she and Zizumbo were facing the pond when the shots rang out behind them is borne out by the autopsy evidence that Zizumbo was shot in the back. Thus, even if IBIS matched the fatal bullet to a gun other than the Uzi, this does not show anyone other than defendant's cohorts fired the fatal shot where Zizumbo was shot in the back and Morales testified the shots came from behind her rather than from the direction of the rival gang members on the bridge beside her. In sum, we conclude that the testing defendant seeks in his petition would not significantly advance a claim of actual innocence and thus the trial court did not err in denying defendant's section 116-3 petition.

¶ 40 In reaching this conclusion, we find *People v. Navarro*, 2015 IL App (1st) 131550, persuasive. The *Navarro* defendant was convicted of first degree murder based on witnesses' testimony that they variously saw the defendant firing the fatal shots, holding a gun after hearing the gunshots, and pulling out a gun while being chased by police officers, and on forensic testing establishing shell casings from the shooting scene matched the gun recovered from the chase route. *Navarro*, 2015 IL App (1st) 131550, ¶¶ 4, 16. In his unsuccessful forensic testing motion seeking IBIS testing, in an argument similar to defendant's argument here, the *Navarro* defendant alleged "that the murder weapon might have been used by one of a 'group of young thugs' allegedly seen in the neighborhood before the shooting." *Id.* ¶ 7. On appeal, as here, the parties did not dispute that identity was issue and a *prima facie* chain of custody was established,

but disputed whether the requested IBIS testing had the potential to produce new, noncumulative evidence materially relevant to the defendant's actual innocence. *Id*. ¶ 15.

¶ 41 We affirmed the denial of IBIS testing because "ballistics evidence was not the lynchpin of the State's case." *Id*. ¶ 18. We found,

> "Through IBIS testing of the shells recovered at the scene, Navarro hopes to find evidence that could link these shells to a different gun, and thus show the gun found on his supposed escape route was not the murder weapon. But Navarro fails to take into account that four witnesses identified Navarro as the shooter. *** This overwhelming eyewitness testimony identifying Navarro as the shooter did not hinge on the ballistics testimony presented by the State, which corroborated the eyewitness testimony by linking the shells at the scene to the recovered gun, and thus the results of any IBIS testing would be immaterial. [Citation.] Thus, IBIS testing of the bullet shells would not materially advance Navarro's claim of actual innocence." *Id*. ¶ 16.

¶ 42 Similarly here, the linchpin of the State's case against defendant was not the ballistics evidence but the overwhelming evidence that defendant was the person who ordered and planned the shooting by codefendants in Marquette Park that resulted in Zizumbo's death, and that he actively cooperated with codefendants before and after the shooting. As in *Navarro*, the State's case did not hinge on the ballistics evidence – here, that the recovered Uzi fired the fatal shot – and the results of any IBIS testing would not materially advance defendant's claim of actual innocence.

¶ 43 Accordingly, the judgment of the circuit court is affirmed.

¶ 44 Affirmed.