

2020 IL App (1st) 172313-U  
No. 1-17-2313  
March 9, 2020

FIRST DIVISION

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS, )	Appeal from the Circuit Court
)	Of Cook County.
Respondent-Appellee, )	
)	No. 00 CR 16875
v. )	
)	
WILLIE HAMPTON, )	The Honorable
)	Michael B. McHale,
Petitioner-Appellant. )	Judge Presiding.

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JUSTICE WALKER delivered the judgment of the court.  
Presiding Justice Griffin and Justice Pierce concurred in the judgment.

**ORDER**

¶ 1 *Held:* If the defendant does not show that any possible result of forensic testing would produce evidence materially relevant to his claim of innocence, the trial court properly rejects the defendant's motion for forensic testing.

¶ 2 The trial court, in 2002, found Willie Hampton guilty of aggravated criminal sexual assault and home invasion. In 2015, Hampton filed a motion for forensic testing of three items related to the offenses: a condom wrapper, a shopping bag, and a shirt. The trial court denied the motion for forensic testing. On appeal, Hampton argues that he presented a *prima facie* case

for testing the three items. We find that Hampton did not show that police seized the condom wrapper. No combination of possible results from testing the bag and the shirt would significantly advance Hampton's claim of innocence. Accordingly, we affirm the trial court's judgment.

¶ 3

### I. BACKGROUND

¶ 4

At approximately 4 a.m. on June 21, 2000, Y.N. called police and reported that three black men robbed her. While driving in the area of the alleged robbery, Officer Daniel Ludwig saw three black men exit a vehicle. One of the men held an Aldi's shopping bag that he threw into the vehicle when he noticed Ludwig, and the three men went into a house on Hoyne Avenue. Ludwig went to Y.N.'s home and spoke with Y.N. and others in the home. He then returned to the vehicle he had seen on Hoyne Avenue and retrieved the Aldi's bag. Y.N. identified the bag as the one the robber took from her. Ludwig knocked on the door of the house on Hoyne Avenue. When no one answered the door, he obtained assistance for forced entry. Ludwig found Hampton, Cory Durr, and Maurice Alexander in the house. Ludwig took them in the police car to Y.N.'s home. Y.N. identified Hampton and Durr as two of the men who robbed her, but she could not identify Alexander as the third.

¶ 5

Y.N. went to a hospital where she submitted to vaginal and oral swabs. Prosecutors charged Hampton and Durr with home invasion and aggravated criminal sexual assault. Durr pled guilty and the court sentenced him to eight years in prison.

¶ 6

At Hampton's bench trial, Y.N. testified that around 3 a.m. on June 21, 2000, she woke to the sound of Hampton (she knew him from the neighborhood) telling her to give him money and marijuana. He held a gun and wore a stocking cap over his face. Hampton then let two

other men into the home Y.N. shared with her brother and others. Y.N. recognized one of the two men as Durr, also from the neighborhood. She did not recognize the third man, who kept his face covered. The three men took cash from Y.N.'s brother. Hampton and the unidentified man then sexually assaulted Y.N. The unidentified man put on a condom, and he put one of Y.N.'s shirts over his head before the assault. When they left, Hampton took an Aldi's bag that held some of Y.N.'s clothes. She identified a photograph as an accurate picture of the condoms she had. The picture showed one condom wrapper torn open.

¶ 7 Durr invoked his fifth amendment privileges in response to all questions relating to the offense, but he admitted that he made a statement about the incident to an assistant state's attorney. The trial court permitted the prosecutor to read the statement into evidence. Durr told the assistant state's attorney that he went along with Hampton and Alexander to steal some money. Hampton entered Y.N.'s home and let Durr and Alexander in a few minutes later. Hampton demanded cash from Y.N. Durr saw Hampton and Alexander sexually assaulting Y.N. The three men left together and returned to the house on Hoyne where police arrested them.

¶ 8 The trial court found Hampton guilty and imposed a sentence on eight counts of aggravated criminal sexual assault and two counts of home invasion. Hampton's direct appeal led to resentencing, and he subsequently filed a postconviction petition challenging the sentences. That postconviction petition remains unresolved.

¶ 9 In 2015, Hampton filed a motion under section 116-3 of the Code of Criminal Procedure (725 ILCS 5/116-3 (West 2014)) for forensic testing of (1) a condom wrapper; (2) the Aldi's

bag; and (3) a shirt police impounded. The trial court denied the motion. Hampton now appeals.

¶ 10

## II. ANALYSIS

¶ 11

On appeal, Hampton argues that he presented a *prima facie* case for fingerprint and DNA testing of a condom wrapper, a shopping bag, and a shirt police impounded. The trial court denied his request. We review *de novo* the court's denial of a motion for forensic testing of evidence. *People v. Hockenberry*, 316 Ill. App. 3d 752, 755 (2000). Section 116-3 of the Code of Criminal Procedure provides:

"(a) A defendant may 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 \*\*\* on evidence that was secured in relation to the trial \*\*\* which resulted in his or her conviction \*\*\*.

(b) The defendant must present a *prima facie* case that:

(1) identity was the issue in the trial \*\*\* 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.

(c) The trial court shall allow the testing under reasonable conditions \*\*\* upon a determination that:

(1) the result of the testing has the scientific potential to produce new, noncumulative evidence \*\*\* materially relevant to the defendant's assertion of actual innocence." 725 ILCS 5/116-3 (West 2014).

¶ 12 Y.N. identified a photograph as an accurate depiction of her bedroom table at the time of the assault. The photograph showed a condom wrapper, torn open. No evidence in the record supports Hampton's claim that police seized the condom wrapper. The inventory of items seized does not mention the condom wrapper. Hence, Hampton has not presented a *prima facie* case that the condom wrapper "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)(2) (West 2014); *People v. Jones*, 334 Ill. App. 3d 61, 64-66 (2002). The trial court correctly denied the motion for forensic testing of the condom wrapper.

¶ 13 Police seized and inventoried the Aldi's bag and a shirt. Hampton seeks fingerprint testing of the bag, arguing that if the tests do not show his fingerprints on the bag, the tests would support his claim that Y.N. misidentified him as one of the assailants. He asks for fingerprint and DNA testing of the shirt, arguing that if the bag and shirt show contact with two different persons, and neither showed contact with Hampton, the evidence would significantly support his claim that he did not participate in the robbery and the assault.

¶ 14 We disagree. Our supreme court considered the exculpatory effect of the absence of a defendant's fingerprints on some articles in *People v. Peeples*, 205 Ill. 2d 480, 538 (2002). The court said, "the lack of his fingerprints at the crime scene does not establish that defendant was not in the apartment; instead, it may indicate \*\*\* that any fingerprints that were left were unsuitable for comparison. In addition, the recovery of latent prints from the victim's apartment

which did not match the victim \*\*\* or defendant does not lead to the conclusion advocated by defendant that the prints were those of the 'actual offender.' To the contrary, the jury could have attributed many innocent explanations to the recovery of the fingerprints, including that they were left by visitors who had been invited into the apartment."

¶ 15 Similarly, if testing fails to find Hampton's fingerprints on the Aldi's bag and it shows the fingerprints of a person other than Hampton and Y.N., the evidence would not support an inference that the fingerprints belonged to the actual offender rather than a person who handled the bag before Y.N. obtained it, or a person Y.N. allowed to handle the bag. The absence of Hampton's prints would only lead to the conclusion that he left no prints suitable for comparison. See *People v. English*, 2013 IL App (4th) 120044, ¶¶ 21–24.

¶ 16 No witness identified the shirt from the police inventory as the shirt the unidentified offender wore over his head. Even if Hampton could establish that the unidentified offender wore the inventoried shirt, the absence of Hampton's prints and DNA from the shirt would have no effect on the credibility of Y.N.'s identification of Hampton as one of the offenders. According to Y.N.'s testimony, she never saw Hampton touch the shirt worn by the unidentified offender. The discovery of the DNA profile of a person other than Y.N. would only show that someone else came in contact with the shirt. It would not support an inference that the DNA came from one of the assailants rather than a person Y.N. permitted to handle the shirt.

¶ 17 We find that no combination of possible results from testing the Aldi's bag and the shirt would significantly support Hampton's claims, and therefore the testing lacks "the scientific potential to produce new, noncumulative evidence \*\*\* materially relevant to the defendant's

assertion of actual innocence.” 725 ILCS 5/116-3(c)(2) (West 2014). Accordingly, we affirm the trial court’s denial of the motion for forensic testing.

¶ 18

### III. CONCLUSION

¶ 19

Hampton has not made a *prima facie* showing that police seized the condom wrapper for which he seeks testing or that the unidentified assailant wore the shirt police inventoried. No combination of fingerprints and DNA found on the Aldi’s bag or the inventoried shirt would significantly support Hampton’s claim of innocence. Accordingly, we affirm the trial court’s decision to deny Hampton’s motion for forensic testing.

¶ 20

Affirmed.