

NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2024 IL App (4th) 230796-U
NO. 4-23-0796
IN THE APPELLATE COURT
OF ILLINOIS

FILED
July 25, 2024
Carla Bender
4th District Appellate
Court, IL

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Whiteside County
IVAN JOHNSON,)	No. 07CF3
Defendant-Appellant.)	
)	Honorable
)	Stanley B. Steines,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Doherty and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, holding the trial court did not err by denying defendant’s motion for forensic testing.

¶ 2 Defendant, Ivan Johnson, who was convicted of first degree murder, appeals the trial court’s denial of his postconviction motion for forensic testing. Defendant argues he sufficiently asserted that identity was an issue at trial and the requested testing had the potential to advance his claim that another individual murdered the victim. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In 2007, defendant was charged with four counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2006)) for causing the death of Douglas Keefer by striking him about the head and body.

¶ 5 The State filed a motion *in limine*, seeking to preclude defendant from introducing evidence that Donald Masini had told Dustin Manon that he “got” Keefer and that he had “hired two guys with bats to take [Keefer] out.” The motion alleged that Manon told a police officer that Masini made this statement to him while they were both incarcerated. However, the officer subsequently interviewed Masini, and Masini denied ever making the statement. The motion alleged Manon had three convictions for obstructing justice and two prior felony convictions for other offenses. Following a hearing, the trial court granted the motion *in limine*, finding a lack of sufficient indicia of reliability to warrant the introduction of Manon’s hearsay testimony concerning his conversation with Masini.

¶ 6 The matter proceeded to a jury trial. The evidence showed that, at approximately 10 a.m. on November 27, 2006, police officers with the Rock Falls Police Department found Keefer, who was deceased. His body was lying face up in the backyard of his residence in Rock Falls, Illinois. Before his death, Keefer was living in a house with no running water and was addicted to crack cocaine. An autopsy revealed that Keefer’s cause of death was neurogenic shock caused by bleeding on the surface of the brain, which was due to “crushing blunt force head and neck trauma,” with aspiration of blood being a contributing factor. The forensic pathologist who had conducted the autopsy testified that Keefer had a fractured jaw and bruising to his face. The forensic pathologist stated that all of Keefer’s injuries were consistent with being punched while either standing or lying on the ground, although objects other than fists could have caused the injuries.

¶ 7 Marie Schlosser testified that she drove to Keefer’s house on the evening of November 26, 2006, with an individual named “C,” who was a drug dealer. Schlosser parked the car in the backyard, and C walked into the house. He exited the house a few minutes later and

said he had been robbed by Nick Sheley. Keefer then exited the house. C asked where Sheley lived, and Keefer said he did not know. Schlosser observed another car pull up. Defendant exited the car and told Keefer they did not “play about [their] money.” Schlosser stated that defendant then started “beating up” Keefer, repeatedly striking Keefer in the face with his fists. Keefer broke free and ran away, but defendant chased him and continued beating him. Keefer fell, and defendant struck Keefer in the face more than five times after he had fallen. Defendant then kicked Keefer, and he left in the car he had arrived in. Schlosser and C then left the scene in their car as well. A detective testified that Schlosser later identified defendant in a photographic lineup as the individual she had seen beating Keefer.

¶ 8 Schlosser identified a photograph of Keefer’s body, which she indicated was in the same place as it was when defendant finished beating him. Schlosser testified that she and another woman returned to Keefer’s residence shortly after the beating, and Keefer was still lying in the same position as when she left the first time.

¶ 9 Rebecca Hooks, a crime scene investigator, testified that she received a call regarding the investigation of Keefer’s death on the morning of November 27, 2006. She proceeded to the scene and observed Keefer lying on the ground. He had a lot of facial injuries, blood was pooled in his mouth, and there was blood on his shirt. The backyard was in “a general state of disarray.” Hooks observed garbage, plywood, a broken windshield, and other items. Hooks identified several photographs of the scene, including the one that Schlosser had testified showed Keefer’s body in the location it was after the beating. Hooks stated this photograph accurately depicted the location of Keefer’s body at the time she arrived at the scene. Hooks stated there were blood-like stains on the plywood and windshield found in the backyard, in the bathroom sink, in the kitchen, and on the storm door inside the house. The stains were all

swabbed. The blood-like stains at the scene were dry, and Hooks could not determine how long they had been there.

¶ 10 Vern Williams testified he spoke to Keefer at approximately 8:30 p.m. on the evening of the incident. He proceeded to Keefer's house, arriving at approximately 9 p.m. The door was unlocked, and Williams entered the house, but no one was home. Williams stayed for several hours and left at approximately 2 a.m. He did not look in the backyard while he was there.

¶ 11 Jeffrey Hager testified that he was at Keefer's house on the afternoon of November 26, 2006. Hager testified he believed he went into the bathroom a couple times "to shut the door," but he never used the bathroom and did not recall seeing blood in the sink. He stated he did not recall seeing blood on the stove while he was in Keefer's kitchen, though it may have been there.

¶ 12 Hager testified that Sheley came over and asked Keefer "to get him some more [cocaine]." Keefer called C to try to obtain the cocaine. Keefer then asked Sheley if he had the money. Sheley pulled out a "long cutlery knife" and said the knife was his money. Sheley held the knife to Keefer's throat and said he would cut someone's throat that night. Keefer laughed as though he thought it was a joke. From Keefer's bedroom, Hager heard an individual enter the house and tell Sheley to put his knife down. Hager heard Sheley tell this individual to give him the "bag." Hager then heard the front door open. Hager opened the bedroom door and did not see anyone in the house or yard, though he heard a voice outside and saw a car parked right next to the back door. Hager left the house in a car with an individual named Al Miller, who had been in the bedroom with Hager. Miller dropped Hager off a few blocks away, and Hager began walking. At some point while he was walking, he saw that it was 9 p.m.

¶ 13 Detective Jay Koett testified that he interviewed defendant. A video recording of the interview was admitted into evidence. In the recording, defendant admitted to hitting Keefer two to three times on the evening of the incident. Defendant stated Keefer fell at one point, and defendant hit him two more times while he was on the ground. Keefer was still moving after he fell, but he did not get up. Defendant then left. Defendant said he did not mean for Keefer to die, and he did not know Keefer was dead.

¶ 14 Defendant testified that, on the day of the incident, he went to Keefer's house with his uncle, Daniel Reid, in a car driven by a woman. Defendant had never met Keefer before. When they arrived, Keefer and C were arguing. Defendant helped Reid, who was disabled, out of the car. Defendant heard C tell Reid that Sheley had ripped him off. Keefer became aggressive, and defendant told him to calm down. Keefer "threw up his guards," but he did not hit anyone. Defendant punched Keefer, and they "got to tussling." Defendant got Keefer on the ground and hit him two or three more times in the face. Defendant stopped because he knew Keefer "couldn't do no more." Defendant and Reid then left in the car they had arrived in. C and Schlosser were still at Keefer's residence when defendant left, and he did not know when they left. Defendant stated he did not intend to kill Keefer.

¶ 15 During closing argument, defense counsel argued the State had presented insufficient evidence that defendant, and not someone else, caused Keefer's death. Counsel stated there was "a lot that could have happened" after defendant left Keefer's house, noting that it was not known exactly when C had left Keefer's house. Counsel stated: "We don't know who else was at the residence after [defendant] left. There has been no further testimony about that."

¶ 16 The jury found defendant guilty of first degree murder, and the trial court sentenced him to 35 years' imprisonment.

¶ 17 On direct appeal, the appellate court affirmed the judgment of the trial court. *People v. Johnson*, No. 3-08-0520 (2010) (unpublished order under Illinois Supreme Court Rule 23).

¶ 18 In 2011, defendant filed a *pro se* postconviction petition, which was summarily dismissed by the trial court. Defendant appealed, and the appellate court affirmed the trial court's summary dismissal of the petition. *People v. Johnson*, 2013 IL App (3d) 110521-U.

¶ 19 On August 1, 2018, defendant, *pro se*, filed a motion for forensic testing pursuant to section 116-3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/116-3 (West 2018)). Defendant requested that DNA or fingerprint testing be performed on the following items, which were not previously subject to testing: (1) blood on a water pitcher in the kitchen, (2) blood found on the stove, (3) blood found on the bathroom sink, (4) blood found on a wooden panel in the backyard, (5) blood found on a windshield outside the residence, (6) a white T-shirt hidden behind the garage, (7) a lug wrench, (8) a hammer found inside a blue van, (9) a metal bar found outside, and (10) footprints found in the kitchen.

¶ 20 The motion for forensic testing alleged that identity was at issue at the trial because defendant “consistently testified to not killing the victim.” The motion asserted that although defendant punched and kicked the victim, the victim was still alive afterward. The motion stated the victim's body was not found until several hours after his altercation with defendant and asserted defendant's theory was that someone else killed the victim after the altercation. The motion asserted the murderer could have been Sheley, who had threatened the victim's life; C, who was present at Keefer's house after the altercation and was the last to leave; Masini, who confessed to a jailhouse informant that he murdered Keefer; or Bill Bruns, who allegedly had stated he would kill Keefer if he saw him.

¶ 21 The motion further alleged the evidence defendant sought to have tested was subject to a sufficient chain of custody, and the results of the testing had the potential to produce evidence materially relevant to his claim of actual innocence. The motion alleged that if the blood on the items inside the house was Keefer's, it would have shown he was still alive and went into his house after the altercation or that another individual "stained with the blood" entered the house after the murder. The motion alleged that if the testing showed the blood and fingerprints belonged to someone other than Keefer or defendant, it would implicate another individual in killing Keefer after his altercation with defendant.

¶ 22 The trial court held a hearing on defendant's motion for forensic testing. Defendant testified that when his altercation with Keefer ended on the night of the incident, he believed Keefer was still alive. Defendant stated there must have been an intervening cause that caused Keefer's death because Keefer was breathing when he left.

¶ 23 After hearing arguments, the trial court denied the motion for forensic testing. The court found defendant had not established that identity was at issue. The court also found that, even if it were to find identity was at issue, nothing would be gained by the requested testing because the testing could only show whose blood and fingerprints were present on the items, not when the blood and fingerprints were placed there. This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, defendant argues that the trial court erred by denying his motion for forensic testing because he sufficiently asserted that identity was at issue during his trial and that the requested testing had the potential to materially advance his claim that someone else murdered Keefer.

¶ 26 Pursuant to section 116-3(a) of the Code (*id.* § 116-3(a), a defendant may, in the trial court that entered his or her judgment of conviction, move for forensic testing of evidence collected by law enforcement officers that was not tested at the time of trial or could now be subject to additional testing utilizing new methods. In such a motion, a 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 has been subject to a sufficient chain of custody to establish that it has not been tampered with or altered. *Id.* § 116-3(b). “Identity is ‘at issue’ in a criminal trial when the perpetrator’s identity is disputed or in question.” *People v. Grant*, 2016 IL App (3d) 140211, ¶ 18. Thus, “a defendant must make a *prima facie* showing that there was an issue at trial as to whether the defendant or somebody else committed the crime.” (Internal quotation marks omitted.) *Id.*

¶ 27 Once a defendant has established a *prima facie* case for forensic testing, the trial court must determine whether the result of the requested testing “has the scientific potential to produce new, noncumulative evidence *** 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) (West 2018); see *People v. English*, 2013 IL App (4th) 120044, ¶ 15. Evidence is “materially relevant” if it will “significantly advance” a defendant’s claim of actual innocence. *People v. Shum*, 207 Ill. 2d 47, 65-66 (2003). “The determination of whether forensic evidence significantly advances the defendant’s actual innocence claim requires an evaluation of the evidence introduced at trial, as well as the evidence the defendant seeks to test.” *People v. Stoecker*, 2014 IL 115756, ¶ 33.

¶ 28 A trial court’s ruling on a motion for forensic testing under section 116-3 of the Code is reviewed *de novo*. *Id.* ¶ 21.

¶ 29 Here, the trial court did not err in denying defendant's motion for forensic testing because defendant failed to show that identity was at issue during the trial. At the trial, Schlosser testified that defendant repeatedly struck Keefer in the face before and after he fell to the ground on the evening of the incident. Defendant admitted during his police interview and during his trial testimony that he struck Keefer in the head several times, including after he had fallen to the ground. The State's evidence indicated that the incident occurred around 8:30 p.m., and Keefer's body was found by police officers at approximately 10 a.m. the next morning in the same location Schlosser had seen Keefer fall. An autopsy revealed that Keefer's death was caused by bleeding on the surface of the brain, which was due to "crushing blunt force head and neck trauma." A forensic pathologist testified that all of Keefer's injuries were consistent with being punched while either standing or lying on the ground. While defendant testified at the hearing on his motion for forensic testing that Keefer was alive when he left, this does not foreclose the possibility that Keefer remained on the ground and ultimately died from the head trauma defendant inflicted.

¶ 30 While defendant theorized during closing argument at trial and in his motion for forensic testing that some other individual may have caused Keefer's death by further beating him before his body was found by the police, no evidence was presented at the trial that this actually occurred. Prior to trial, the trial court excluded Manon's hearsay testimony that Masini admitted to hiring two individuals to beat Keefer with baseball bats on the basis that it lacked sufficient indicia of reliability. Also, Williams testified at the trial that he was at Keefer's house from approximately 9 p.m. on the evening of the incident until 2 a.m. the next morning, which was after other witnesses indicated the beating occurred. Williams testified that no one else was at the house during that time, though he stated he did not look in the backyard.

¶ 31 Even if identity had been at issue in defendant’s trial, he failed to establish that forensic testing of the materials named in the motion had the potential to produce evidence that would be materially relevant to his claim of actual innocence. While defendant was not required to show that the requested forensic testing would “completely exonerate” him (725 ILCS 5/116-3(c) (West 2018)), he was required to demonstrate that the potential existed for the results to “significantly advance” his claim of actual innocence. *Shum*, 207 Ill. 2d at 65-66. Defendant argues that if Keefer’s blood was found on objects inside his home, it would indicate he was alive after defendant beat him and that Keefer subsequently reentered the house. Defendant notes Hager’s testimony that he did not observe blood on the items in the house prior to Keefer’s death. Defendant also contends that if Keefer’s blood or the blood or fingerprints of another individual were found on the wrench, hammer, plywood, or windshield found in Keefer’s backyard, it would “indicate[] another agent in Keefer’s death,” as the State’s evidence showed defendant only hit Keefer with his fists and kicked him.

¶ 32 However, as the trial court noted, the requested DNA and fingerprint testing could not establish *when* the blood and fingerprints were deposited on the items defendant sought to have tested. Accordingly, the requested testing could not establish either that another perpetrator beat Keefer after defendant left or that Keefer was alive after defendant beat him. With regard to the blood found inside the house, while Hager testified that he did not recall seeing blood in the sink or in the kitchen the day of Keefer’s death, he did not testify definitively that it was not there.

¶ 33 Moreover, even if the requested forensic testing could somehow establish that Keefer was alive after defendant left and that another perpetrator was involved, this would not necessarily relieve defendant of criminal liability for Keefer’s murder. While “an intervening

cause completely unrelated to the acts of the defendant does relieve a defendant of criminal liability,” a defendant may be found guilty of murder when his or her criminal acts have contributed to a person’s death, even when the defendant’s acts are not the sole and immediate cause of death. *People v. Brackett*, 117 Ill. 2d 170, 176 (1987). Accordingly, in the unlikely event that another individual found Keefer in an injured state after defendant left, beat him further, and left him lying in the same position he was in after defendant beat him, this would not render defendant actually innocent of the murder if defendant’s blows to Keefer contributed to his death.

¶ 34 Thus, while the requested forensic testing could produce results that would arguably lend some support to defendant’s theory that an intervening actor caused Keefer’s death by beating him further after defendant left, it could not produce evidence that would significantly advance a claim that defendant was actually innocent of first degree murder.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we affirm the trial court’s judgment.

¶ 37 Affirmed.