2026 IL App (1st) 241521-U

No. 1-24-1521

Order filed October 13, 2026

First Division

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).

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. 07 CR 0265301
	)	
DIEGO SANTIAGO,	)	Honorable
	)	John F. Lyke, Jr.,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment denying defendant's motion for forensic testing is reversed and the cause is remanded for further proceedings.

¶ 2 Defendant-appellant Diego Santiago (defendant) appeals from the denial of his *pro se* motion for forensic testing of a shell casing under section 116-3 of the Code of Criminal Procedure (Code) (725 ILCS 5/116-3) (West 2022). He raises several reasons for reversing the denial of his motion: (1) the required testing was not performed at the time of trial, (2) the identity of the

offender was at issue at trial, (3) the shell casing had been subject to a secure chain of custody, and (4) the requested testing has the potential to produce new, noncumulative evidence that is materially relevant to his claim of actual innocence. We reverse the judgment of the trial court and remand for further proceedings consistent with this order.

¶ 3 BACKGROUND

¶ 4 Defendant's conviction stems from a December 28, 2006, gang fight between the Maniac Latin Disciples (MLD) and the Spanish Cobras near the intersection of Armitage and Tripp Avenues in Chicago, in which Epifanio Santos was fatally shot. The State charged Emelio Rivera, Miguel Adorno, Alexandro Flores, Martin Logan, and defendant with first degree murder (720 ILCS 5/9-1(a)(1) (West 2006)) and conspiracy to commit first-degree murder (720 ILCS 5/8-2 (a) (West 2006)). Defendant was also charged with unlawful use of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2006)).

¶ 5 At trial, a jury found defendant guilty of first degree murder. The court imposed 30 years' imprisonment for UUWF and an additional 25-year enhancement for personal discharge of a firearm. We affirmed his conviction and sentence on direct appeal, and affirmed the summary dismissal of his initial postconviction petition. *People v. Santiago*, 409 Ill. App. 3d 927 (2011); *People v. Santiago*, 2014 IL App (1st) 121916-U.

¶ 6 *Trial Evidence*

¶ 7 At trial, MLD Carlos Garcia identified defendant as an MLD member named "Punchy." Garcia testified that on December 28, 2006, MLD members had a gang meeting behind defendant's home to "violate," or initiate, an MLD member named Casper, and then the group left to fight the Cobras. Garcia stated that defendant did not leave with the group but, instead, stayed home.

Around 8 p.m., Garcia, Adorno, Rivera, and Logan fought Cobras Rene Otero and Epifanio Santos near Armitage and Tripp Avenues. Garcia fought Otero on the north side of Armitage. Rivera, Logan, and Flores fought Santos in the middle of Armitage. Garcia saw defendant approach along the south side of Armitage, carrying a firearm. He heard gunshots two or three minutes later, but did not see defendant fire a weapon and did not see anyone get shot. Garcia released Otero, who ran west.

¶ 8 The parties stipulated to Garcia's grand jury testimony transcript, included in the record on appeal. Before the grand jury, Garcia stated that he, Adorno, Logan, and Punchy (defendant) walked to the scene, while Flores and Rivera drove. At the scene, Garcia fought Otero. He could see Santos fighting Flores, Rivera, and Logan on the sidewalk on the south side of Armitage. Then, "Punchy came with the gun," shots were fired, and Garcia lost sight of Santos. Garcia also testified before the grand jury that he lost sight of Santos before Punchy fired his weapon, that parked cars blocked his view, and that Punchy walked up Armitage and fired while Santos was already down.

¶ 9 Counter to Garcia, MLD Miguel Adorno testified at trial that defendant had never been an MLD member and had no street name. Adorno stated that the street name Punchy belonged to Casper, and Adorno did not see defendant after the group left the meeting behind defendant's home. Adorno fought the Cobras and heard two or three gunshots while at the scene.

¶ 10 Adorno first told police he did not know who shot Santos. He later told police that Casper exited an alleyway and shot Santos. Adorno initiated a plea deal after spending over 500 days in custody. He stated he "would have agreed to anything to get out of there" and was led to believe that he would not be charged if he identified defendant as the shooter.

¶ 11 The State read a portion of Adorno's statement to police into the record. Relevant here, Adorno told police that he witnessed defendant shoot Santos in the head while Santos was on the ground, and indicated that defendant shot Santos from 6 to 10 feet away. The State also published to the court and entered into evidence a transcript of Adorno's guilty plea hearing. The transcript is included in the record on appeal, but is redacted and is missing pages. At Adorno's plea hearing, Adorno testified that he told police defendant shot Santos.

¶ 12 MLD Martin Logan testified that defendant was not MLD, not Punchy, not at the scene, and did not shoot Santos. He further testified that Casper had a firearm at the scene. According to Logan, police instructed him to identify defendant as Punchy and as the shooter, and he was led to believe he would avoid charges if he cooperated. Logan stated he pled guilty to the conspiracy charge because, after 600 days in county custody, he wanted out, and his attorney said that he "didn't have a chance."

¶ 13 The State read an excerpt from Logan's police statement into the record. Logan told police that he "dropped [Santos] down" with one hit, and Punchy retrieved a firearm from his hooded sweatshirt and shot Santos. The State also introduced into evidence an image presented to Logan during his police interview and included in the record on appeal. Logan testified that the image appeared to show defendant, and that police instructed him to write "Punch" underneath the image.

¶ 14 The State entered into evidence a transcript of Logan's plea hearing. The transcript is included in the record on appeal, but is redacted and missing pages. At the hearing, Logan agreed that he told police that Punchy "pulled a gun out" and fired it twice at Santos.

¶ 15 At trial, Rene Otero testified that he was with Santos on the night of the shooting. Otero fought two people while Santos fought "about five" men in the street. Otero's combatants held

him down, and he heard two shots while pinned. In court, he identified defendant as the person holding a firearm at the scene. After the shots were fired, everyone else ran, but Otero stood up. However, the cars parked along the street blocked his view. He did not see Santos, and presumed that he fled. Otero then ran across the street and found Santos laying on the ground.

¶ 16 Otero also testified he was already "getting up" when the first shot was fired, but he did not see the shooting. He also testified that he was on the ground when the first shot was fired, and his attackers fled after that. He heard the second shot two seconds later and fled, but for "a couple of seconds," he saw someone holding a firearm. Otero first told police that he remembered nothing from the incident. Later, he identified defendant as the person carrying the firearm at the scene.

¶ 17 Defense counsel entered a transcript of Otero's grand jury testimony into evidence. Before the grand jury, Otero stated that his attackers fled after the second gunshot. Otero's statement indicated he looked over and saw Santos laying on the ground across the street. Defendant stood near Santos' body, holding a firearm in his right hand. Otero stated he saw defendant placed the firearm under his shirt and run off.

¶ 18 Briefly, Chicago police officer Vincent Stinar testified that he arrested Logan and that officers did not encourage Logan to provide specific information to detectives. Chicago police detective James Gilger testified that he recovered and inventoried a shell casing found on the sidewalk near Santos' body. Detective Gilger stated that the casing was in the same condition at trial as when he saw it on the street, and was among the evidence impounded by the court. In addition, the parties stipulated to the following: that detective Gilger took defendant into custody around 10:00 p.m. on the night of the incident; that, if called to testify, forensic pathologist Dr. Clare Cunliffe would testify that Santos died by homicide, as a bullet entered near the top of his

head and exited on the back of his head; and Chicago police officer Sullivan[1] would testify that he swabbed the hands of Rivera, Garcia, and Flores to test for any gunshot residue (GSR). The record does not reflect that the police collected any swabs from defendant. Finally, Illinois State Police trace evidence analyst Robert Berk testified as a GSR analysis expert. Berk performed GSR tests on the swabs collected from Rivera, Garcia, and Flores, and failed to identify any unique GSR particles in any of the three kits.

¶ 19 The defense presented no evidence at trial. After closing arguments, the jury found defendant guilty of first degree murder, and the court imposed a sentence of 30 years' imprisonment for the murder, with an added 25 years for discharging a firearm. *Santiago*, 409 Ill. App. 3d 927.

¶ 20 *Defendant's Motion for Forensic Testing*

¶ 21 On June 9, 2020, defendant filed a *pro se* "Petition for Forensic Testing under 725 ILCS 5/116-3," seeking fingerprint testing on one spent shell casing found near Santos' body, retrieved from the scene, and "inventoried under # 10893729." Defendant alleged that identity was at issue at trial, and that the shell casing was previously untested, had 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," and was impounded after admission at trial. He further alleged that the testing of the shell casing could potentially produce new evidence to support his innocence.

¶ 22 Defendant further asserted that Adorno made a plea deal after he learned about the shell casing, and that at trial Adorno and Logan recanted their statements to police and testified that they "lied in exchange for a plea deal." Defendant asserted that the test results could show who loaded

[1] Officer Sullivan's first name was not adduced at trial.

the firearm, cast doubt on the identity of the offender, and provide exculpatory evidence not available at trial. He attached two affidavits to his motion. In the first affidavit, Alexandro Flores stated that he witnessed Adorno shoot Santos at the scene. In the second affidavit, Gilberto Portugues identified Francisco Martinez as "Ponch" and stated that Adorno brought a firearm to the scene.

¶ 23 *The Hearing on the Motion*

¶ 24 In December 2022, the court granted an agreed order to allow the requested forensic testing. In January 2023, the State moved to rescind the order and deny defendant's motion because the evidence bag containing the shell casing was opened during trial and "in an unsealed condition." The State argued that because the bag was opened at trial, the casing's evidentiary potential was null and defendant failed to present a *prima facie* showing of a sufficient chain of custody.

¶ 25 At a hearing on the motion, former Assistant State's Attorney (ASA) John Maher testified that he was the trial attorney in this case, and that the evidence bag was sealed when he received it from police before trial. At trial, he cut open the bag, shook out the shell casing into his hand, held it between his bare thumb and forefinger, then placed it in front of his witness. ASA Maher believed the evidence was given to the jury during deliberation. The defense did not question him.

¶ 26 The court found ASA Maher credible, noted that it had "never seen a prosecutor ever not show a fired shell casing to a witness who they had under oath," and denied further testing.

¶ 27 We granted defendant leave to file his late notice of appeal under Illinois Supreme Court Rule 606(c).

¶ 28 ANALYSIS

¶ 29 *Section 116-3 Prerequisites*

¶ 30 In the instant appeal, the crux of defendant's argument is that he has met the criteria for forensic testing under section 116-3.

¶ 31 Section 116-3 sets the prerequisites that a defendant must satisfy to establish entitlement to postconviction forensic testing. *People v. Smith*, 2014 IL App (1st) 113265, ¶ 19. A defendant may file a motion before the trial court that entered judgment on his case for "fingerprint, Integrated Ballistic Identification System, or forensic DNA testing" on evidence "secured in relation to the trial or guilty plea which resulted in his [ ] conviction." 725 ILCS 5/116-3(a) (West 2022). Testing is allowed by statute if the evidence was not previously subjected to the requested testing and if the defendant presents a *prima facie* case that (1) identity was the issue at 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 aspect." 725 ILCS 5/116-3(a), (b) (West 2022); *People v. Cocroft*, 2020 IL App (1st) 180056, ¶ 20. Where the defendant presents a *prima facie* case, the circuit court must grant the requested testing on a determination that 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" him, and the requested testing "employs a scientific method generally accepted within the relevant scientific community." See 725 ILCS 5/116-3(c) (West 2022).

¶ 32 The State contends that we must review for manifest error because the trial court heard testimony on defendant's motion and based its ruling on ASA Maher's credibility. See, *e.g.*, *People v. Slover*, 2011 IL App (4th) 100276, ¶¶ 13-16. However, the requirement that defendant need only present a *prima facie* showing of chain of custody under section 116-3 obviates the need for an

evidentiary hearing on chain of custody. 725 ILCS 5/116-3(a), (b) (West 2022). Thus, courts consistently review the disposition of a section 116-3 motion *de novo*, and we do so here. *Cocroft*, 2020 IL App (1st) 180056, ¶ 21 (procedurally, reviewing court must accept as true and construe liberally the well-pleaded facts in a petition for postconviction forensic testing, as it is in the nature of a civil complaint or petition for relief and, thus, review of the denial of such a petition is *de novo*); see *People v. Brooks*, 221 Ill. 2d 381, 393 (2006)..

¶ 33 The State concedes that identity was at issue at trial and does not contest that the requested fingerprint testing would employ an acceptable scientific method. Instead, the State argues that defendant failed to establish a sufficient chain of custody for the casing, and that testing would not yield any evidence of material relevance to his claim of actual innocence.

¶ 34 *Chain of Custody*

¶ 35 As stated, a defendant must only make a *prima facie* showing of chain of custody under the statute. 725 ILCS 116-3(b)(2) (West 2022). The State asserts that chain of custody was deficient because ASA Maher handled the casing at trial and the jury may have handled it during deliberations. This argument conflates the chain of custody requirement with the casing's evidentiary potential. These are two separate questions. See, *e.g.*, *People v. Chairs*, 2021 IL App (1st) 180921-U, ¶ 32. That is, the possibility that the condition of the evidence may not yield meaningful testing does not affect whether defendant's motion made a *prima facie* case that the evidence was subject to a proper chain of custody. See *People v. LaPointe*, 2018 IL App (2d) 160432, ¶¶ 40-41.

¶ 36 Because the evidence to be tested has undoubtedly been in the custody of the State and the court (and not in the defendant's), a defendant cannot be expected to prove a proper chain of

custody at the outset and, thus, "may rely on conclusions and presumptions in his or her petition." *Cocroft*, 2020 IL App (1st) 180056, ¶ 21. Therefore, an allegation that the evidence to be tested has been in the possession of the police or a state authority remains facially sufficient to satisfy the chain of custody requirement of section 116-3. *Id.*; accord *People v. Kines*, 2015 IL App (2d) 140518, ¶ 29.

¶ 37 Here, defendant alleged in his motion that the "evidence sought 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. This evidence was admitted at trial and was eventually impounded by the clerk of the court" of Cook County. He identified the evidence by number and included the impound record with his motion. Moreover, the trial record shows that chain of custody was maintained. At trial, the State presented the shell casing as evidence and detective Gilger testified to chain of custody. At the hearing on defendant's motion, ASA Maher testified that the evidence bag containing the casing was sealed prior to trial, and that he cut open the bag at trial. After trial, the exhibit was impounded by the clerk of the circuit court and remained in the circuit court's custody since trial.

¶ 38 As to State's point that the jury may have handled the casing, we cannot expect defendant to present proof when jury deliberations occurred behind closed doors. *Chairs*, 2021 IL App (1st) 180921-U, ¶¶ 32-34 (defendant's motion for forensic testing sufficiently established a *prima facie* showing of chain of custody although the State and a witness handled the evidence at trial, and the evidence was given to the jury during deliberations). The standard requires, when liberally construed, that Defendant make a *prima facie* showing of chain of custody. *LaPointe*, 2018 IL App

(2d) 160432, ¶ 41. He has met the standard. Finding otherwise would bar future testing of evidence handled at trial and defeat the purpose of section 116-3.

¶ 39 *Material Relevance of Potential Findings*

¶ 40 Next, defendant asserts that because no forensic evidence connected him to the offense, and no witnesses testified at trial that they saw him shoot Santos, the fingerprint and DNA testing could identify some other individual who handled the casing. According to defendant, these new forensic results would provide new, non-cumulative evidence that is materially relevant to his claim of actual innocence.

¶ 41 Materially relevant evidence need not exonerate the defendant. The standard remains whether the testing has the potential to produce new, noncumulative evidence that will advance his claim. 725 ILCS 5/116-3(c) (West 2022). "A motion for forensic testing should be granted where such testing holds out even the ' "slight" ' possibility for a favorable result." *People v. Morrow*, 2022 IL App (1st) 200388, ¶ 61 (quoting *People v. Price*, 345 Ill. App. 3d 129, 134 (2003) (internal citation omitted)). In determining whether the forensic evidence is materially relevant to defendant's actual-innocence claim, we must evaluate the evidence introduced at trial and the evidence he seeks to test. *People v. Savory*, 197 Ill. 2d 203, 213-14 (2001); see *LaPointe*, 2018 IL App (2d) 160432, ¶ 45.

¶ 42 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." *People v. Gecht*, 386 Ill. App. 3d 578, 582 (2008); accord *Savory*, 197 Ill. 2d at 213. And, within this context, where eyewitness evidence is overwhelming, the result of any forensic testing would do little to undermine the State's

evidence and would thus lack material relevance. See, *e.g.*, *People v. English*, 2013 IL App (4th) 120044, ¶¶ 23-24.

¶ 43 Here, on careful review of the record, we cannot say that the evidence against Defendant was overwhelming. No forensic evidence linked him to the offense, and he was not found in possession of the firearm used. Direct evidence of his involvement came from eyewitness testimony, which, as we have summarized, conflicted at trial and was recanted, coerced, and tainted with self-interest. Witnesses identified Casper as the shooter to police and at trial. Adorno and Logan recanted their identification of defendant to police and further indicated their statements were made in exchange for their deals. And, significantly, witnesses disagreed on whether defendant was Punchy or had the street name Punchy, and whether defendant or Punchy was at the scene. Moreover, testimony further conflicted over who shot Santos and how the shooter approached him. Although Otero identified defendant as the shooter, he only saw the shooter from across the street for but a few seconds at night, and his grand jury and trial testimonies significantly varied as to his line of sight, observations, and behavior after the shooting. See *People v. Taylor*, 2025 IL App (1st) 231074-U, ¶ 46 (eyewitnesses' evidence at trial not overwhelming where accounts differed and identification of the defendant as the offender was made in self-interest).

¶ 44 Accordingly, the absence of defendant's DNA on the shotgun shell, or the identification of another DNA profile, would be new, noncumulative evidence that would advance his claim of innocence. *Id.* ¶¶ 46-48. The presence of additional fingerprints on the casing could bolster or lend credibility to defendant's continued claim of innocence. *Id.* ¶ 47 (the State's argument that defendant may not be innocent despite a nonmatch to defendant or a match to another defies section 116-3). Whether defendant's claim and evidence meet the standard required for a meritorious

postconviction claim is a question for a future trial court. *People v. Grant*, 2016 IL App (3d) 140211, ¶ 28.

¶ 45 We likewise reject the State's speculation that the handling of the case at trial "obliterated any existing fingerprints." Instead, we construe section 116-3 liberally to "favor its purpose of making the criminal justice process more reliable by allowing, *where there is a reasonable basis*, the acquisition of sound scientific evidence that is probative on the issue of identity." *LaPointe*, 2018 IL App (2d) 160432, ¶ 56 (emphasis in original). Regardless of whether the evidence eventually supports defendant's or the State's claims, its acquisition "will contribute to the reliability of the criminal process and confidence in the ultimate result." *Id.* In the end, defendant will still have substantial hurdles to overcome in pursuing forensic testing relief. But, we will not set these hurdles "so high as to endanger the important purposes of" section 116-3. *Id.*

¶ 46 Accordingly, fingerprint testing of the shell casing in this case is warranted. If appropriate, the results should be compared to defendant or other forensic samples collected by criminal justice agencies as outlined in section 116-3(a). 725 ILCS 5/116-3(a) (West 2022).

¶ 47 We reverse the judgment of the trial court and remand for further proceedings consistent with this order.

¶ 48 Reversed and remanded.