

FIFTH DIVISION
September 25, 2026

Nos. 1-24-1298 & 1-25-0903, cons.

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 95 CR 2077101
	)	
EDWARD WILLINGHAM,	)	Honorable
	)	Tiana Blakely,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Oden Johnson and Justice C.A. Walker concurred in the judgment.

ORDER

- ¶ 1 *Held:* Affirming the circuit court’s denial of defendant’s postconviction petition after a third-stage hearing.
- ¶ 2 In 1997, Edward Willingham was found guilty of the first degree murder of Shiquita Fleming and the attempted murder and aggravated battery with a firearm of Maurice Scott. The trial court sentenced him to a total of 90 years in prison. Mr. Willingham filed a postconviction petition asserting claims of actual innocence and ineffective assistance of trial counsel. Following a third-stage hearing in 2024, the court denied his petition. Mr. Willingham now appeals that

denial.

¶ 3 We affirm. The postconviction court’s findings were not manifestly erroneous. We agree with Mr. Willingham that the distinction that the court drew between factual and legal innocence is inapplicable here, but we disagree that the court’s reliance on this distinction was a reversible error.

¶ 4 I. BACKGROUND

¶ 5 Mr. Willingham’s convictions stem from a shooting on the afternoon of June 20, 1995, in Chicago Heights. He has never disputed that he was there or that he fired a gun. His defense at trial was that he shot in self-defense after other people shot at him first when he arrived at what he thought was a fistfight between members of his gang—the Gangster Disciples—and a rival gang—the Four Corner Hustlers, or Solid Fours.

¶ 6 The State’s trial witnesses claimed that Mr. Willingham and two codefendants—Albert Adams and Tyjuan Turner, who are not parties to this appeal—were the only shooters and that Mr. Willingham shot at unarmed individuals. In his postconviction petition and at the evidentiary hearing thereon, Mr. Willingham offered support for his self-defense argument with new, undiscovered evidence, as well as the testimony of witnesses that he knew of before trial and contended that his trial counsel’s failure to call was ineffective assistance.

¶ 7 There are a large number of witnesses, many of whom share a last name with other witnesses. To avoid confusion, we will refer to most of these witnesses by their first name.

¶ 8 A. Trial and Direct Appeal

¶ 9 At trial, Mr. Willingham testified that, on the day of the shooting, he planned to go to Albert Adams’s house on the west side of Chicago Heights, to sell three guns to someone nicknamed “Spider.” A friend drove him there with the guns. When he arrived, he saw no one there. He and

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his friend drove to 435 Hickory Street, in Chicago Heights, where Albert's cousin lived, and where Albert frequently hung out.

¶ 10 On Hickory Street, Mr. Willingham saw 30 to 35 people fighting. He saw Albert and Tyjuan Turner, also Gangster Disciples, pick up Tyrone Bennett, who had been knocked down in the fight. As they did so, "the crowd starting reaching in." Mr. Willingham put one of the guns in his waistband and got out of the car, knowing that the street was Solid Four territory. The other two guns were in a bag he carried under his arm.

¶ 11 According to Mr. Willingham, a Solid Four member named Jermaine Fleming approached him, flanked by four or five other men. Mr. Willingham knew Jermaine to carry a gun, and testified that he had actually shot at Mr. Willingham's car recently. When Jermaine said, "I got your a*** now," Mr. Willingham lifted his shirt to show him the gun in his waistband. Mr. Willingham then heard a gunshot. Although he did not see Jermaine holding a gun, he thought that the shots had come from him or one of the men behind him. Mr. Willingham drew his gun and tried to shoot at Jermaine, but it did not go off. He heard more shots and fled, dropping the bag containing the other two guns.

¶ 12 Mr. Willingham testified that, as the crowd fled east down the street, he saw another Solid Four member, Jerrett McCullor, chasing and shooting at Albert and Tyjuan. Fearing that Jerrett would kill them, Mr. Willingham fired his own gun at Jerrett until he ran out of bullets. He then ran into Albert's house, following Tyjuan, who also had a gun. About an hour later, he learned that two people had been shot: Shiquita Fleming, a sixteen-year-old girl who one affiant later alleged was involved in the fight, and Maurice Scott, a Solid Four member.

¶ 13 Eight days later, Mr. Willingham voluntarily turned himself into the police. He gave a statement to an assistant State's attorney (ASA), who wrote the statement down and had Mr.

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Willingham sign it. In that statement, he said that he received a message on a pager that he should come to the west side of Chicago Heights, after previously being told there had been a fight. He grabbed the bag of guns and got a ride. He did not say why he grabbed the guns. When he got out of the car and was approached by Jermaine, Mr. Willingham drew one gun and dropped the bag with the other two, where some other people grabbed them. Jermaine then ran away, and Mr. Willingham tried to shoot at him but his gun initially did not go off. He did not see Jermaine with a gun. He cocked his gun and fired 10-12 bullets at him, emptying his gun. Only then did he see Jerrett shooting towards Albert.

¶ 14 At trial, Mr. Willingham testified that no one asked him when he was giving the statement whether Jermaine had a gun. Although the written statement said that Jermaine did not have a gun, Mr. Willingham believed that on the day of the shooting he did have one.

¶ 15 In the State's case-in-chief, seven people who were members of the Solid Four gang on the day of the shooting testified: Maurice (the one who was shot), Livingston Hall, Willie Fleming, Joseph Fleming, Japheth Harris, Jermaine, and Jerrett. Shirley Fleming and Ida Ruffin, who were related to some of those gang members, also testified about the shooting.

¶ 16 These witnesses testified that it was only after the last fistfight on Hickory had ended and the crowd had started to disperse that Mr. Willingham arrived in a car and got out with a white plastic bag. According to those witnesses, Mr. Willingham, Albert, and Tyjuan took guns from the bag. The three men then shot into the dispersing crowd, killing Shiquita and injuring Maurice. The State's witnesses testified that no one else was armed with or pulled out guns that day. Jerrett, Maurice, and Jermaine each specifically denied carrying a weapon.

¶ 17 Shirley was also Shiquita's mother. She testified that Shiquita was shot while she and

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Shiquita ran away after the fight when Shirley heard someone say, “they got some guns.”

¶ 18 The State also called Gregorio Salinas, a parttime police officer who lived on Hickory Street. Mr. Salinas’s recollection of the shooting was consistent with that of the Solid Fours and their relatives. He was certain that the only gunfire came from three men shooting into the crowd, after they each removed a gun from a white bag that one of them was holding. He could not see the hands of the people in the crowd and did not see Jerrett, whom Mr. Willingham testified shot at Albert, at all.

¶ 19 Police officers recovered over 20 spent cartridge casings and multiple bullets related to the shooting. An expert in firearm identification testified that the evidence was consistent with three to five guns being fired.

¶ 20 The jury found Mr. Willingham guilty of first degree murder, attempted murder, and aggravated battery with a firearm. He received consecutive sentences of 60 years for murder and 30 years for attempted murder. The aggravated battery with a firearm charge merged into the attempted murder conviction.

¶ 21 We affirmed Mr. Willingham’s convictions on direct appeal, rejecting his challenges to the prosecutor’s closing argument and his sentence. *People v. Willingham*, No. 1-97-2343 (1998) (unpublished order pursuant to Illinois Supreme Court Rule 23).

¶ 22 B. Mr. Willingham’s Postconviction Petition

¶ 23 In 1999, Mr. Willingham filed this *pro se* postconviction petition. The circuit court advanced the petition to the second stage and appointed him counsel. In 2013, counsel filed a supplemental petition raising the claims at issue on this appeal. Those claims are that (1) trial counsel was ineffective for not calling Robert Johnson, Gentry Johnson, and Tyrone Bennett as witnesses, all of whom signed affidavits stating that some of the Solid Four members were armed

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with guns on the day of the shooting, and (2) Mr. Willingham is actually innocent, based on an affidavit signed in 2000 by Jacobi Adams stating that Jermaine shot at Mr. Willingham before Mr. Willingham fired any shots. Robert, Gentry, Tyrone, and Jacobi's affidavits were attached in support of these claims.

¶ 24

1. Robert's Affidavit

¶ 25 Robert's affidavit, dated August 6, 2013, said that he was with Mr. Willingham, who was his cousin, around 2:30 to 3 p.m. on the day of the shooting. He then drove Mr. Willingham's car, without Mr. Willingham, to Albert's house. While in that area, he saw a fight break out between young members of the Gangster Disciples and Four Corner Hustlers. Robert drove several of the young Gangster Disciples away, including Gentry. As he did so, Maurice, Jerrett, and another Four Corner Hustler member tried to block his car on Hickory Street and threw rocks at it. All three were armed with handguns. After he drove away, Robert was pulled over by police officers, but they let him go when word of the shooting on Hickory came over their radio. He spoke with Mr. Willingham's attorney and told him the same story. He "was in court ready and prepared to testify" at trial but Mr. Willingham's attorney did not call him.

¶ 26

2. Gentry's Affidavit

¶ 27 Gentry's affidavit, dated November 8, 2011, was largely consistent with Robert's. He added that, as Robert drove them away from Hickory, he heard gunshots fired at their car.

¶ 28

3. Tyrone's Affidavit

¶ 29 Tyrone's affidavit, dated November 14, 2012, stated that he was near Albert's house on the day of the shooting around 3:30 or 4:30 p.m. Japheth, a Four Corner Hustler who testified at Mr. Willingham's trial, arrived and threatened one of Tyrone's companions. Tyrone and Japheth fought, and Japheth ran away. Tyrone and his companions walked to Albert's house. Soon after,

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Robert picked up two of the people who had been with Tyrone. Tyrone went to 435 Hickory Street, where his aunt lived. Albert and Tyjuan, Mr. Willingham's codefendants, arrived along with a few others. As they hung out, they heard a large crowd approaching. "[M]aybe a couple of hundred" Four Corner Hustler members had arrived. Maurice confronted Albert about why Tyrone and his companions had jumped Japheth.

¶ 30 Tyrone stated in his affidavit that Maurice and Jerrett were armed. Tyrone fought Japheth again, and when he won the fight, all the other Four Corner Hustlers "jumped on [him]." One of those people was Shiquita, who was later killed. While Tyrone was on the ground being attacked, he heard gunshots but did not see who fired them. He did not see Mr. Willingham there and did not see Mr. Willingham's codefendants with a gun.

¶ 31 4. Jacobi's Affidavit

¶ 32 Jacobi, who is Albert's brother, signed an affidavit that was dated March 31, 2000. It provided, in its entirety:

"On June 20, 1995 at approximately 3:30 & 4 p.m. I was in the car with Corey Harvey & Jermaine Fleming. They are both known Solid 4's. But I was cool with them. We was riding around, listening to the radio and smoking weed. We rode down Hickory Street and that's when we notice the crowd. I knew Jermaine had a gun, I saw him hide it under his seat, so I was nervous. Corey parked the car and we got out. Just as we was exiting his car, Edward [(Mr. Willingham)] was walking up the street. I notice Edward had something in his hand, but I paid no attention. I was trying to find out who was fighting but before I could, I saw Jermaine shoot at Edward. I thought Edward was hit [be]cause he almost fell down. I saw the bag Edward was holding hit the ground and guns spilled out of the bag. Edward shot back and everyone started to run. I ran into Jackie's house [(Jacobi

and Albert’s cousin)] and she was on the phone with the police.”

¶ 33 C. Proceedings on Mr. Willingham’s Supplemental Petition

¶ 34 The circuit court dismissed Mr. Willingham’s supplemental petition at the second stage, and we reversed that decision in part. *People v. Willingham*, 2020 IL App (1st) 162250. We found that Mr. Willingham had made a substantial showing of actual innocence based on Jacobi’s affidavit that Jermaine shot at Mr. Willingham first. *Id.* ¶ 37. If a jury believed Jacobi’s account, it could find that Mr. Willingham was justified in using deadly force to protect himself. *Id.* ¶ 36 (citing 720 ILCS 5/7-1(a)-(b) (West 2016)).

¶ 35 We also found that Mr. Willingham made a substantial showing that his trial counsel was ineffective for failing to call Robert, Gentry, and Tyrone as witnesses. *Id.* ¶¶ 39-56. Because the record did not “reflect any rationale” for failing to call the witnesses, Mr. Willingham was entitled to an evidentiary hearing to determine whether his trial counsel had any tactical explanation for that decision. *Id.* ¶ 48. Mr. Willingham made a substantial showing of prejudice because the testimony of those witnesses would have supported his claim that members of the opposing gang were armed and contradicted the testimony of the State’s witnesses on that point. *Id.* ¶¶ 50-56. Accordingly, we remanded for an evidentiary hearing on these two claims. *Id.* ¶ 71.

¶ 36 D. The Evidentiary Hearing

¶ 37 Mr. Willingham presented evidence on his ineffective assistance and actual innocence claims at a third-stage evidentiary hearing held on January 26, 2024, and March 22, 2024.

¶ 38 1. Mr. Willingham’s Case

¶ 39 Robert testified consistently with his affidavit about going to Albert’s house and witnessing a fight between some young Gangster Disciples and Four Corner Hustlers. After the fight, he drove some of the young men away. When at the corner of Hickory and Division, he heard gunshots and

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saw Joseph and Jermaine, two of the State's witnesses, standing at the corner and "shooting at the car." They "shot up the back door and the front a little bit." Robert sped away and drove towards another person's house in Park Forest. Park Forest police officers pulled him over and searched the vehicle for drugs. They did not find any and left after receiving a call on their radio. Robert told the officers that Joseph and Jermaine had shot at his car. Robert had told Mr. Willingham's trial attorney what he observed on the day of the shooting, but he was not asked by Mr. Willingham's attorney to testify and did not attend the trial.

¶ 40 On cross-examination, the State asked Robert whether he spoke with Mr. Willingham's attorney in 1996. He responded that he did not recall. He also did not recall testifying on direct examination that he had contact with Mr. Willingham's attorney. When asked, "Did you in fact speak with the defense attorney for your cousin in 1996?" he responded, "No, ma'am." The State showed Robert a handwritten document dated April 5, 1996, which bore his signature. The document, which is included in the record on appeal, purports to memorialize a statement that Robert gave to Mr. Willingham's trial counsel. The statement indicates that, when the Four Corner Hustlers tried to block his car, Robert saw that "Mook" had a handgun.

¶ 41 Counsel submitted the affidavits of Gentry and Tyrone as exhibits. Tyrone had died since executing his affidavit.

¶ 42 To support his actual innocence claim, Mr. Willingham called Jacobi, who testified that, on June 20, 1995, he and a group of Gangster Disciples, including Tyrone, got in a fight with a larger group of Four Corner Hustlers. Counsel asked how Jacobi got to the area, and he testified that he was driven there by Jermaine. They saw the crowd on Hickory and they got out of the car. Jacobi went to the side where the Gangster Disciples were, and Jermaine went to the side where

the Four Corner Hustlers were. Jacobi denied that anybody in the car was armed.

¶ 43 During the fight, a single gunshot rang out. Jacobi testified that everyone “froze,” and then “the bag came out and people grabbed the guns out the bag and returned fire back at ‘em. Then that’s when the gunshots came from everywhere and everybody took off running.” The first shot came from the Four Corner Hustlers. Jacobi did not see Mr. Willingham during the fight but did see him when someone dropped the bag of guns and the Gangster Disciples started returning fire.

¶ 44 On cross-examination, the State showed Jacobi his 2000 affidavit, and he acknowledged that it stated that Mr. Willingham had been holding the bag of guns. He also acknowledged that his affidavit said that he knew Jermaine had a gun and had shot at Mr. Willingham.

¶ 45 Jacobi testified, though, that he did not actually know who fired the first shot. In 2022, he was interviewed by the State’s attorney and two investigators and told them that what was written in the affidavit was not true. At that time, he signed a copy of the affidavit and wrote, “Do not believe I said this and did not type it for sure.” He explained that in 2000, when the affidavit was prepared, he “was a teenager” and “probably would have d[one] anything to help [his] brother out.” His brother was Albert, Mr. Willingham’s codefendant.

¶ 46 Mr. Willingham next called Michael Donner, who testified that he had been at the fight on Hickory and that some of the Four Corner Hustlers were armed. He did not see Mr. Willingham with a gun and could not tell whether the first shots came from the Four Corner Hustlers or the Gangster Disciples.

¶ 47 Mr. Willingham also introduced the 2020 affidavit of Lawrence Long. Lawrence swore that on the day of the shooting he was 13 years old and a member of the Four Corner Hustlers. He was with Japheth when Japheth fought Tyrone and other Gangster Disciples around 3:30 or 4 p.m. After the fight, Japheth got a gun from under his bed. They then met with Jerrett—whom Mr.

Willingham testified shot at Albert and Tyjuan—and Maurice, who was shot that day. Lawrence saw Maurice retrieve a gun from inside his car and was there when Jerrett told Maurice that he was also armed.

¶ 48 When the next fight began, Lawrence saw Jermaine and someone named Corey get out of a car and walk towards Mr. Willingham. The “[n]ext thing” Lawrence knew, those two were shooting at Mr. Willingham. Mr. Willingham held a gun in one hand and a white bag in the other. Japheth, who had given Lawrence his gun, then took the gun back and started shooting towards Mr. Willingham and Albert, who were also shooting.

¶ 49 2. The State’s Case

¶ 50 The State called Mr. Willingham’s trial counsel, Kevin Peters. When asked, “did you conduct an investigation in this case?” Mr. Peters responded, “No.” He explained that he did not hire an investigator and did not recall canvassing the area of the shooting. He did visit the scene of the shooting, however, and spoke with witnesses, including Robert. He identified the notes he took during their conversation, which were dated April 5, 1996, and which Robert had signed. He explained why he did not call Robert at trial:

“Well this—this statement doesn’t, in my opinion, didn’t help [Mr. Willingham] at that time, because, first of all, there’s nothing in here about [Mr. Willingham] other than Robert Johnson and [Mr. Willingham] are cousins. Secondly, he, [Robert] says that he saw a person named Mook, who I never—I’m sure I asked him if he had a first and last name for Mook so I can investigate that, I was not given that.

Mook had a gun, but the timing of it was like 15 to 20 minutes before the shooting. So, in my opinion, Mook could’a [*sic*] had a gun then and not had it when the shooting occurred, so I didn’t think he really added anything, and Edward testified to his self

defense.”

¶ 51 The State asked Mr. Peters, “does the name Tyrone Bennett mean anything to you?” and Mr. Peters answered, “No.”

¶ 52 3. The Court’s Ruling

¶ 53 The court denied Mr. Willingham’s petition. It first addressed his actual innocence claim. The court stated that, “actual innocence means factual innocence, not mere legal insufficiency,” and that “[a] claim of legal rather than factual innocence will not support an actual innocence claim.” The court found that Jacobi’s testimony was not credible, based on his “demeanor while testifying” and the inconsistencies between his 2000 affidavit and testimony at the hearing. “[P]articularly,” the court highlighted, he had sworn in the affidavit that Mr. Willingham held the white bag with the guns and dropped it but in his live testimony had testified that he did not know who had the bag and dropped it. The court also found Mr. Donner’s testimony “absolutely not credible.” The court then repeated that Mr. Willingham was required to show he was “factually innocent,” which he had not done given his testimony at trial that he fired a weapon.

¶ 54 The court also found that Mr. Willingham failed to show that his trial counsel was ineffective. Even if Mr. Peters had performed deficiently, the court stated, Mr. Willingham was not prejudiced, because Robert was not a credible witness. The court noted that Robert testified he was not present at the shooting and “falsely testified *** that he never met with the attorney Mr. Peters,” a point on which “he was clearly impeached.” The court also stated that it could not assess Gentry’s credibility but he was not present at the shooting and the court did not need to take his affidavit as true at the third stage.

¶ 55 The circuit court denied Mr. Willingham’s petition on June 7, 2024. His counsel filed a timely notice of appeal the same day (No. 1-24-1298). Then, on June 27, 2024, he mailed a *pro se*

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motion to reconsider, which the circuit court received on August 9, 2024. He stated in that motion that Lawrence, whose affidavit he had submitted at the hearing, told Mr. Willingham’s attorney and the State’s attorney that he feared for his life and that testifying “while the Flemings and other solid four gang members were in the court room, would have put him and his family in harm[‘]s way.”

¶ 56 The circuit court denied that motion on April 11, 2025, and Mr. Willingham filed a timely second notice of appeal on April 24, 2025 (No. 1-25-0903). We consolidated the two appeals.

¶ 57 II. JURISDICTION

¶ 58 We have jurisdiction over appeal No. 1-25-0903 pursuant to article VI, section 6 of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rule 606 (eff. Apr. 15, 2024) and Rule 651(a) (eff. July 1, 2017), governing appeals from final judgments in postconviction proceedings. The State argues that the circuit court was divested of jurisdiction to hear the motion to reconsider because Mr. Willingham had already filed a notice of appeal before filing his motion to reconsider. According to the State, this means that the circuit court’s ruling on the motion to reconsider was void and we cannot review it.

¶ 59 Under Rule 606(b), “[w]hen a timely posttrial or postsentencing motion directed against the judgment has been filed by counsel or by defendant, if not represented by counsel, any notice of appeal filed before the entry of the order disposing of all pending postjudgment motions shall have no effect and shall be stricken by the trial court.” Ill. S. Ct. R. 606(b) (eff. Apr. 15, 2024). Because Mr. Willingham mailed his motion to reconsider on June 27, 2024, and substantially complied with the requirements of Rule 12(b)(6) (eff. July 1, 2017), it was a timely filed motion directed against the June 7, 2024, judgment. See *People v. Shunick*, 2024 IL 129244, ¶¶ 27-31 (explaining that, where a *pro se*, incarcerated litigant mails a document before it is due and

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substantially complies with Rule 12(b)(6), the date he mailed the document is the date the document is considered filed). When he filed that motion, the first notice of appeal lost jurisdictional effect. Ill. S. Ct. R. 606(b) (eff. Apr. 15, 2024).

¶ 60 When Mr. Willingham filed a timely notice of appeal from the circuit court’s denial of that motion, we obtained jurisdiction pursuant to Rule 606(b), which provides that a notice of appeal must be filed within 30 days after the entry of an order disposing of a timely motion directed against the judgment. Although the notice of appeal in appeal No. 1-24-1298 was rendered ineffective by the filing of the motion to reconsider and we therefore dismiss that appeal, we consider Mr. Willingham’s challenges to the circuit court’s order denying his postconviction petition as part of appeal No. 1-25-0903. See *People v. Dominguez*, 366 Ill. App. 3d 468, 472-73 (2006) (in consolidated appeals, finding it proper to dismiss appeal of circuit court’s initial ruling because notice of appeal was nullified by postjudgment motion, but court had jurisdiction to consider both rulings based on timely notice of appeal following ruling on that motion.)

¶ 61 III. ANALYSIS

¶ 62 On appeal, Mr. Willingham argues that he showed his trial counsel was ineffective for failing to call Robert and Tyrone as witnesses at trial. He also argues that he showed he was actually innocent based on the testimony of Jacobi.

¶ 63 A. Overview of the Post-Conviction Hearing Act

¶ 64 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2024)) provides a three-stage process in which a defendant can claim that his conviction stemmed from a substantial denial of his constitutional rights. *People v. Smith*, 2026 IL App (1st) 232404, ¶ 50. Where, as here, a defendant’s petition advances to the third stage, he must prove by a preponderance of the evidence that he suffered a substantial violation of his constitutional rights or that he is actually innocent.

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People v. Campbell, 2026 IL App (1st) 240705, ¶ 53 (citing *People v. Coleman*, 2013 IL 113307, ¶ 92). Unlike during the first two stages, where the petition’s allegations are taken as true, during a third-stage hearing the circuit court serves “as a factfinder, making credibility determinations and weighing the evidence,” to determine whether the defendant has met this burden. (Internal quotation marks omitted.) *Smith*, 2026 IL App (1st) 232404, ¶ 50.

¶ 65 B. Ineffective Assistance of Counsel

¶ 66 Defendants have a constitutional right to the effective assistance of counsel. *People v. Domagala*, 2013 IL 113688, ¶ 36 (citing U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8). A defendant’s claim that he did not receive effective assistance is governed by the standard provided in *Strickland v. Washington*, 466 U.S. 668 (1984). *Domagala*, 2013 IL 113688, ¶ 36.

¶ 67 That standard requires the defendant to demonstrate both that his counsel’s performance was deficient and the deficient performance caused prejudice. *Id.* Counsel’s performance was deficient where it “was objectively unreasonable under prevailing professional norms.” *Id.* A defendant is prejudiced where “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” (Internal quotation marks omitted.) *Id.* A reasonable probability means a “ ‘a probability sufficient to undermine confidence in the outcome—or put another way, that counsel’s deficient performance rendered the result of the trial unreliable or fundamentally unfair.’ ” *Campbell*, 2026 IL App (1st) 240705, ¶ 76 (quoting *People v. Evans*, 209 Ill. 2d 194, 220 (2004)). The defendant must satisfy both prongs of the *Strickland* test to succeed on an ineffective assistance claim, and if one is not established, we need not consider the other. *Id.* ¶ 77.

¶ 68 1. Standard of Review

¶ 69 A circuit court’s decision following a third-stage evidentiary hearing is generally reviewed

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for manifest error. *People v. McCoy*, 2026 IL 131565, ¶ 50. “Manifest error is clearly evident, plain, and indisputable.” (Internal quotation marks omitted.) *Id.*

¶ 70 The parties dispute whether this standard governs Mr. Willingham’s ineffective-assistance claim. Mr. Willingham argues that a third-stage denial of an ineffective assistance claim is subject to a mixed standard of review. Under the standard he proposes, we would defer to the circuit court’s factual findings but review the ultimate issue of whether counsel’s actions amounted to ineffective assistance *de novo*, without providing any deference to the circuit court on that question. The State maintains that the correct standard is manifest error.

¶ 71 We agree with the State. Another panel of this court recently decided this issue in *Smith*, 2026 IL App (1st) 232404, which we granted the State leave to cite as supplemental authority here. The defendant in *Smith* made the same argument and cited the same cases as Mr. Willingham—*People v. Cassian Coleman*, 2015 IL App (4th) 131045, and *People v. Velasco*, 2018 IL App (1st) 161683. *Smith*, 2026 IL App (1st) 232404, ¶ 52.

¶ 72 In *Smith*, we determined that the analysis in those cases was “misguided.” *Smith*, 2026 IL App (1st) 232404, ¶ 53. That was because our supreme court had made clear that *de novo* review is only appropriate where no new evidence was presented and the only issues were pure questions of law. *Id.* Where the court’s decision involved fact-finding and credibility determinations, the manifest-error standard applies. *Id.* *Cassian Coleman* was inconsistent with that principle. *Id.* ¶ 54 (citing *McCoy*, 2026 IL 131565, *People v. English*, 2013 IL 112890, and *Coleman*, 2013 IL 113307).

¶ 73 Like in *Smith*, the circuit court here was not presented with pure questions of law. Mr. Willingham argued that his trial counsel had performed ineffectively because the result of his trial would have been different had counsel called Robert, Gentry, and Tyrone to testify. To say whether

this was true, the court needed to evaluate the proposed testimony of those witnesses and determine whether, considering the trial evidence, there was a reasonable probability that the result would have been different. Because that decision involved factfinding and credibility determinations, the proper standard is manifest error. *Id.* We note, though, that even if we reviewed this issue under Mr. Willingham’s proposed mixed standard, the outcome would be the same.

¶ 74 2. No Manifest Error in Trial Court’s Finding of No Prejudice

¶ 75 Mr. Willingham argues that his counsel performed deficiently because he knew Robert would say that the Four Corner Hustlers were armed before the shooting, testimony which would have contradicted that of the State’s witnesses and corroborated Mr. Willingham’s self-defense argument. He also notes that, while counsel testified that Tyrone’s name meant nothing to him, Tyrone was listed as a potential witness in a supplemental answer to discovery that the State provided before trial. Mr. Willingham additionally highlights counsel’s testimony that he did not investigate the case, utilize an investigator, recall canvassing the area of the shooting, or know who “Mook” was even though witnesses at trial testified that Jerrett was Mook.

¶ 76 We need not decide whether Mr. Willingham showed that his counsel performed deficiently, because we conclude that the court did not manifestly err in finding that he failed to establish prejudice by his counsel’s failure to call Robert and Tyrone as witnesses.

¶ 77 In making the determination that Mr. Willingham failed to show prejudice, the circuit court stated that it did not find Robert to be credible. The court specifically noted that he “falsely testified” that he never met with trial counsel, a point on which the court found he was impeached. Mr. Willingham disputes that finding, pointing out that on direct examination, Robert clearly said that he spoke with Mr. Willingham’s attorney and on cross-examination, he merely denied meeting with Mr. Willingham’s attorney “in 1996.” Mr. Willingham also argues that Robert could have

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been confused because Mr. Willingham’s postconviction counsel used the term “trial attorney” during his direct examination while the State used the term “defense attorney” on cross-examination.

¶ 78 Although the circuit court did not point to them, there were other inconsistencies in Robert’s testimony, especially between his affidavit and his hearing testimony. For example, in his affidavit, Robert swore that the armed Four Corner Hustlers who tried to block him from driving away threw rocks at his car. At the hearing, however, he testified that not only did they have guns, but they shot his car, “sho[oting] up the back door and the front a little bit.” He also said in his affidavit that he “was in court ready and prepared to testify at [Mr.] Willingham’s trial,” but testified at the hearing that he did not attend the trial.

¶ 79 Also, Robert is Mr. Willingham’s cousin, and we have recognized that witnesses who are related to the defendant are less likely to persuade a jury. *Campbell*, 2026 IL App (1st) 240705, ¶ 84 (citing *People v. Lacy*, 407 Ill. App. 3d 442, 466 (2011), and *People v. Deloney*, 341 Ill. App. 3d 621, 635 (2003)). The circuit court did not manifestly err in concluding that Robert would not have been such a compelling witness for Mr. Willingham that there was a reasonable probability that, but for the failure to call him, the result of the proceeding would have been different.

¶ 80 As to Tyrone, the court did not specifically say that it found Tyrone’s affidavit not credible. But a court making a third-stage finding on a postconviction petition does not need to state whether it found each piece of evidence credible, or “make any explicit findings” at all. (Internal quotation marks omitted.) *People v. House*, 2023 IL App (4th) 220891, ¶ 105. And our task as a reviewing court is to determine whether the circuit court’s “ultimate determination,” based on the totality of the evidence, is manifest error. *Id.*

¶ 81 At this point we cannot assume that a jury would have believed Tyrone’s testimony. That

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assumption was appropriate at the second stage, where taking an affidavit as true means assuming that a jury would believe the testimony at a new trial. *People v. Brooks*, 2021 IL App (4th) 200573, ¶ 44. It does not apply at the third stage, where it is the defendant's burden to prove his claim and the statements of his witnesses no longer must be taken as true. *Smith*, 2026 IL App (1st) 232404, ¶ 50. This is so even though the State did not introduce any evidence at the hearing to rebut Tyrone's assertions—which, of course, it did during trial.

¶ 82 In addition, in considering prejudice, the court must determine whether the missing testimony undermines confidence in the outcome of the trial. *Campbell*, 2026 IL App (1st) 240705, ¶ 76. In this context, Tyrone's affidavit is lacking. Tyrone did not see who fired first, or indeed who fired any of the shots. His testimony would only contradict the testimony of the State's witnesses that Jerrett and Maurice were not armed. That could be important evidence, as we have noted. *Willingham*, 2020 IL App (1st) 162250, ¶ 50. We do not see, though, how it would probably have changed the result at trial. Even if Jerrett and Maurice had guns, it would not mean that Mr. Willingham's self-defense claim would probably have succeeded. Because Tyrone did not see any of the shots as they were fired, he could not corroborate Mr. Willingham's testimony that he was not the initial aggressor and had a reason to believe, subjectively or objectively, that his use of deadly force was necessary. Mr. Willingham needed to prove those facts to establish self-defense. See *People v. Heintz*, 2026 IL 131340, ¶ 53 (stating the elements of self-defense).

¶ 83 Nor would Tyrone's affidavit help explain the differences between Mr. Willingham's testimony at trial and his statement to police. Mr. Willingham testified at trial that he thought someone behind Jermaine had shot at him, he tried to fire at Jermaine but his gun did not go off, and he then shot at Jerrett because he saw Jerrett shooting at his codefendants. But he said in his statement that he shot at Jermaine while Jermaine ran away, without mentioning that someone else

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shot first. Mr. Willingham also said in the statement that it was not until he had emptied his own gun by firing 10 to 12 shots that he saw Jerrett shooting at Albert. Tyrone's affidavit does not cure the problem of Mr. Willingham's failure to tell the police that he thought he was being shot at before he fired his own gun.

¶ 84 In our decision advancing Mr. Willingham's petition to the third stage, we found that the testimony of Robert, Gentry, and Tyrone, collectively, would probably have changed the result at trial by indirectly supporting Mr. Willingham's self-defense argument. *Willingham*, 2020 IL App (1st) 162250, ¶¶ 50-56. But because that appeal involved a second-stage ruling, we were required to assume that the jury would believe the testimony of all three witnesses, something that is no longer true. The findings we make when reviewing a second-stage decision are not conclusive when reviewing the subsequent third-stage decision because the defendant's allegations no longer enjoy this presumption and the standard of review is more deferential. *People v. Gacho*, 2016 IL App (1st) 133492, ¶ 13. At the third stage here, the circuit court could weigh the evidence and determine that the testimony of Robert and Tyrone did not create a reasonable probability of a different result. That ruling was not manifest error.

¶ 85 C. Actual Innocence

¶ 86 "To succeed on a claim of actual innocence, the petitioner must present evidence that is (1) newly discovered, (2) material and not cumulative, and (3) of such a conclusive character it would probably change the result on retrial." *McCoy*, 2026 IL 131565, ¶ 54. Only the third element is at issue here.

¶ 87 New evidence does not need to be "entirely dispositive to be likely to alter the result on retrial." (Internal quotation marks omitted.) *Id.* ¶ 55. The key is "[p]robability, not certainty," in judging what a jury would likely decide when considering the old and new evidence together.

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(Internal quotation marks omitted.) *Id.* If the court finds that some of the new evidence is not credible, that portion of the evidence does not factor into the analysis of whether a new result is likely on retrial. See *id.* ¶ 67 (excluding the testimony of a witness who was not credible when determining whether the defendant’s new evidence would probably change the result on retrial). The standard of review in an appeal from a third-stage evidentiary hearing on a defendant’s actual innocence claim is manifest error. *Id.* ¶ 51.

¶ 88 Mr. Willingham contends that the court erred in finding that Jacobi’s testimony was not credible and therefore would not probably change the result on retrial. Alternatively, he argues that we should remand for a new evidentiary hearing because the circuit court applied an incorrect standard requiring “factual innocence” as opposed to “legal innocence.”

¶ 89 1. The Court’s Ruling Was Not Manifest Error

¶ 90 The circuit court found Jacobi’s testimony not credible because of how it differed from the sworn assertions in his affidavit. His affidavit was the evidence that convinced us to advance Mr. Willingham’s actual innocence claim to the third stage. We stressed that he swore “he was right there—in the car with Jermaine Fleming,” that “Jermaine Fleming was armed,” and that “Jermaine Fleming shot at Mr. Willingham before Mr. Willingham fired his gun.” *Willingham*, 2020 IL App (1st) 162250, ¶ 35. This corroborated Mr. Willingham’s testimony that he was not the initial aggressor. *Id.* ¶ 36. The affidavit went “to the very heart of whether Mr. Willingham shot in self-defense and, *if believed*, certainly place[d] the trial evidence in a different light and undermine[d] the court’s confidence in the judgment of guilt.” (Emphasis added and internal quotation marks omitted.) *Id.* ¶ 35.

¶ 91 Jacobi’s testimony at the hearing did not include those important details. In fact, he has disavowed the affidavit entirely, saying that he did not believe he said those things, definitely did

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not type them, and that they are not true. He admitted that, at the time he signed the affidavit in 2000, he was a teenager who would do anything to help his brother Albert, Mr. Willingham's codefendant. When he was interviewed in 2022, he said he did not see Jermaine with a gun in the car or who fired the first shot, and that is what he repeated at the evidentiary hearing.

¶ 92 When the lower court tells us that it found a witness to be credible, or not to be credible, "we are at the height of our deference to that court." (Internal quotation marks omitted.) *House*, 2023 IL App (4th) 220891, ¶ 89. It was reasonable for the circuit court here to find that the changes in Jacobi's account destroyed his credibility. He did maintain at the evidentiary hearing that the first shot came from the Four Corner Hustlers. But his relationship with Mr. Willingham's codefendant and the changes to his story gave the court a basis for disbelieving his testimony. The circuit court also stated that its credibility determination was based on Jacobi's demeanor, which we cannot observe.

¶ 93 Mr. Willingham argues that Jacobi was credible because his testimony was corroborated by the affidavit of Lawrence Long, which was submitted for the first time at the evidentiary hearing. Lawrence, who was a teenage Four Corner Hustler, swore that Jermaine and someone named Corey fired the first shots at Mr. Willingham. He also swore that Jerrett and Maurice were armed.

¶ 94 Lawrence's affidavit does not demonstrate that the circuit court was required to find Jacobi credible or that Mr. Willingham proved his actual innocence. Lawrence's affidavit was not presumed to be true. *Smith*, 2026 IL App (1st) 232404, ¶ 50. Lawrence did not testify, so he was also not subject to cross-examination, which, as the State points out, is " 'the principal means by which the believability of a witness and the truth of his testimony are tested.' " *People v. Blue*, 205 Ill. 2d 1, 12 (2001) (quoting *Davis v. Alaska*, 415 U.S. 308, 316 (1974)).

¶ 95 Mr. Willingham argues in his reply brief that Lawrence did not testify at the evidentiary hearing because he was afraid of the Flemings. He cites nothing in the record to support this, other than the fact that he made this same unsupported assertion in his motion to reconsider. Further, as Mr. Willingham notes, Lawrence’s account was consistent with that of Robert, Gentry, and Jacobi. But the circuit court found Robert and Jacobi not to be credible, and stated that it could not assess Gentry’s credibility but did not have to take his affidavit as true.

¶ 96 At bottom, Mr. Willingham’s actual innocence claim rests only on Jacobi. The circuit court found Jacobi not to be credible and, on that basis, found that Mr. Willingham had not proven his actual innocence. That finding was not manifestly erroneous.

¶ 97 2. The Court’s References to Legal Innocence Were Not Prejudicial Error

¶ 98 Before announcing its ruling on Mr. Willingham’s actual innocence claim, the court stated that, “actual innocence means factual innocence, not mere legal insufficiency.” The court also stated that evidence for actual innocence must show “that the petitioner is innocent of the charge for which he is incarcerated as opposed to legal innocence as a result of a legal error.” The court then found that Jacobi was “not credible and based on that it [wa]s highly unlikely that [his] testimony would change the result at a retrial.” After making those credibility findings, the court again referred to “legal innocence versus actual innocence.” It noted that Mr. Willingham asserted self-defense but did not show that he was “factually innocent based on his testimony at trial that he fired a weapon and the victim was subsequently killed.”

¶ 99 The distinction that the court drew between legal innocence and factual innocence is not applicable here. Self-defense is not a claim of legal insufficiency, but an affirmative, fact-based defense that “Illinois courts have repeatedly recognized” can support a viable claim of actual innocence. *People v. Williams*, 2021 IL App (1st) 190239, ¶ 43.

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¶ 100 While we agree with Mr. Willingham that this distinction did not apply, we disagree that this was a prejudicial error that entitles him to a new evidentiary hearing.

¶ 101 Remand is necessary where the circuit court erroneously requires a defendant to prove his actual innocence under a “total vindication” standard rather than correctly considering whether the new evidence “would probably lead to a different result on retrial.” *People v. Robinson*, 2021 IL App (1st) 171371, ¶¶ 55-58. The circuit court here did not submit Mr. Willingham’s evidence to an improper standard of proof, like the circuit court in *Robinson*. Rather, the court here unequivocally found that Jacobi was not a credible witness. Mr. Willingham’s actual innocence claim rested on this key witness. Even if the court’s remarks suggested a misunderstanding of the nature of self-defense, this misunderstanding did not undermine the circuit court’s conclusion that this witness would not be likely to change the outcome on retrial. There would be no purpose in remanding this case, and “[t]he law does not require the doing of a useless act.” (Internal quotation marks omitted.) *Okic v. Fullerton Surgery Center, Ltd.*, 2019 IL App (1st) 181074, ¶ 85.

¶ 102

IV. CONCLUSION

¶ 103 As Mr. Willingham has not shown that the court committed manifest error in denying his petition, or that remand is necessary because the court applied an improper standard of proof, we affirm the judgment of the circuit court of Cook County denying Mr. Willingham’s postconviction petition. We dismiss appeal No. 1-24-1298 for lack of jurisdiction.

¶ 104 No. 1-24-1298, Appeal dismissed.

¶ 105 No. 1-25-0903, Affirmed.