2026 IL App (1st) 251121-U

No. 1-25-1121

Order filed September 10, 2026

FOURTH 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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. RASHID MUJKOVIC, Petitioner-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County, Criminal Division. No. 16 CR 15404 01 Honorable James B. Novy, Judge, presiding.

JUSTICE MITCHELL delivered the judgment of the court.
Presiding Justice Lyle and Justice Ocasio concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in dismissing defendant's postconviction claims where, even considering defendant's claimed errors, he could not show a reasonable probability that the result would have been different, and evidence in support of his actual innocence claim was not newly discovered.

¶ 2 Defendant Rashid Mujkovic appeals the circuit court's dismissal of his postconviction petition at the second stage (725 ILCS 5/122-1 *et seq*. (West 2024)). At issue is (1) whether the circuit court erred in dismissing defendant's ineffective assistance of counsel claim because defendant made a substantial showing that trial counsel's failure to impeach a witness prejudiced his defense; (2) whether the circuit court erred in dismissing defendant's *Brady* claim because

defendant made a substantial showing that the State's failure to disclose an alleged romantic relationship between a detective and a State's witness prejudiced his defense; and (3) whether the circuit court erred in dismissing defendant's actual innocence claim because defendant made a substantial showing that his evidence was newly discovered and would probably change the result upon retrial. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 After a bench trial, defendant Rashid Mujkovic was convicted of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2016)). The circuit court sentenced defendant to a term of 85 years' imprisonment, which included a 25-year firearm enhancement. 730 ILCS 5/5-4.5-20(a), 5-8-1(a)(1)(d)(iii) (West 2020).

¶ 5 At defendant's trial, the State presented the following testimony. Matt Handley testified that in the early morning hours of May 28, 2016, he was with his friend Damien Cionzynski. After a night of drinking at a bar, the two of them walked from Cionzynski's house to a nearby gas station on Montrose Avenue and Narragansett Avenue to purchase cigarettes. Inside the gas station's store, a man in a red shirt, later identified as Mujkovic's co-defendant Florin Mulosmani, came up to Handley. At first, Handley shook Mulosmani's hand, thinking he recognized him. However, Mulosmani began touching Handley's pockets, asking if he had anything inside them. Meanwhile, defendant Mujkovic, who was with Mulosmani, flashed a gun that was in his pocket. Handley saw the gun and put his hands up, stating "I don't want no part of this" and that he did not have anything in his pockets. Handley grabbed Mulosmani's hand and threw it off himself. Handley told Mulosmani to get his hands off him, threatening, "or I'll beat your ass." Then,

Mulosmani punched Handley in the face. Handley's friend, Cionzynski, who had been at the check-out counter, punched Mulosmani back. Defendant then fatally shot Cionzynski in the head.

¶ 6 Sayed Ali, who was working as the cashier at the gas station store during the shooting, also testified. Ali observed all four men in the store, and his testimony largely corroborated Handley's. He explained that he initially saw the men talking and shaking hands. Then, Mulosmani began touching one of their pockets. Ali heard Handley say, "get your motherfucking hands off me," but he did not hear any threats. Ali testified that Mulosmani punched Handley and then Cionzynski. Cionzynski pushed Mulosmani back, and defendant, who was standing behind Mulosmani, shot Cionzynski. Ali testified that he did not see the actual shooting but heard bullet sounds and saw Cionzynski lying on the floor with blood coming from his head. Once Cionzynski fell to the floor, Mulosmani and defendant ran away, and Ali called 911. While waiting for officers to arrive, Handley entered and exited the store a few times.

¶ 7 Ali further testified that the gas station store was equipped with security cameras, and video footage of the incident was admitted into evidence. The video depicts Mulosmani approaching Handley and Cionzynski. Mulosmani talks to Handley and looks back at defendant who slightly lifts his gun out of his front pocket. Mulosmani moves slightly so defendant is more visible to Handley and smiles at him. Mulosmani continues to talk to Handley and then points behind him toward defendant who grabs and lifts his gun again. After talking some more, Mulosmani punches Handley and then backs away. Defendant steps closer to Handley with his hand still on his gun. Then, Mulosmani punches Cionzynski. Cionzynski regains his balance from the punch and moves towards Mulosmani with his left hand on Mulosmani's chest and his right hand in a fist above his shoulder as he prepares to throw a punch. As Cionzynski steps towards Mulosmani in this position,

Mulosmani steps back, and defendant pulls his gun out of his pocket and fires at Cionzynski's head from a short distance. After Cionzynski falls to the ground, the video shows defendant and Mulosmani immediately running out of the store.

¶ 8 Tisa Rodriguez also testified for the State. She explained that in the early morning on May 28, 2016, she was with defendant and Mulosmani, her boyfriend at the time. The three of them had been hanging out and driving around in Rodriguez's car, a 2016 silver Saturn. Mulosmani was driving, Rodriguez was in the passenger seat, and defendant was in the back seat on the driver's side. At some point after driving down Oak Park Avenue, Rodriguez became aware there was a gun in the car. Rodriguez testified that the three of them drove to Berwyn because defendant and Mulosmani wanted to hide the gun. Once there, they drove to an alley behind Rodriguez's apartment building and Rodriguez saw defendant give Mulosmani the gun. Mulosmani exited the car and came back without the gun. The group then drove to 71st Street and Harlem Avenue to pick up Rodriguez's friend, Amanda Duran.

¶ 9 Rodriguez testified that Duran sat in the back seat behind her. The group drove back to Rodriguez's apartment building because defendant said he wanted to pick up the gun to reload it. When they arrived, Rodriguez and Duran went up to Rodriguez's apartment to use the bathroom. When they returned, Rodriguez knew the men had retrieved the gun because she saw Mulosmani give it to defendant. The group then drove to defendant's apartment in Wrigleyville where defendant reloaded the gun. After, the group headed to a hotel on Touhy Avenue. On the way, defendant pointed his gun outside the car while it was in motion and fired a couple of shots into the air. When the car got to a red light, Duran exited the car, saying she needed to get out because she had kids. Mulosmani told Duran that she needed to get back in the car and that he would take

her home. Rodriguez explained that they did not take Duran home immediately because Rodriguez's sister, Yolanda Valentin, needed a ride, and the group spoke about picking her up. Before they went to get Valentin, however, they stopped at a gas station. Defendant and Mulosmani went into the gas station store while Rodriguez and Duran waited in the car. From where they were parked, Rodriguez could not see inside the gas station. While they waited in the car, Rodriguez heard a gunshot and then saw defendant and Mulosmani run back to the car. Rodriguez testified that the men seemed nervous and frantic.

¶ 10 According to Rodriguez, once the men were back in the vehicle, defendant said, "get me the fuck out of here," and Mulosmani drove away quickly. Defendant also told Mulosmani to "take us to the woods," which Rodriguez believed meant defendant was going to kill them. The group drove to pick up Valentin and then went to Rodriguez's apartment. Inside, Rodriguez testified that defendant came in her bedroom and told her and Mulosmani to hurry up, saying "we need to do this now." Rodriguez thought this meant defendant was going to kill Duran. Rodriguez realized that Duran had left the apartment, and defendant said they needed to look for her. The group got back in the car, and they drove around the area for a while looking for Duran. When they did not find her, they again went to defendant's house in Wrigleyville. In the living room of defendant's apartment, defendant and Mulosmani were talking and laughing. Defendant said, "I have good aim, right?" and commented that he shot the victim in the temple. Defendant said he needed enough money to get out of town and that he needed to burn the car. Eventually, the group left to go to another house. Rodriguez's stepmother came to pick her up and they went to the police station.

¶ 11 On cross-examination, defense counsel asked Rodriguez about hearing a gunshot on Oak Park Avenue, which she had not testified to before. Rodriguez explained that she heard gunshots

when the group was driving down Oak Park Avenue on their way to pick up Duran. When Duran later joined the group, Rodriguez did not warn her about the gun or tell her about the Oak Park incident. On redirect, Rodriguez elaborated that defendant and Mulosmani were arguing in the car when a group of people walked past. Mulosmani yelled something out the window and someone in the group yelled something back. Rodriguez was looking straight ahead when she heard a gunshot and the group scattered. One person in the group fell to the ground, and Mulosmani drove off. Rodriguez said the gunshot came from the back seat where defendant was sitting alone at that point in the night.

¶ 12 Amanda Duran testified that on the morning of the shooting, she was with defendant, who she had never met before, and Mulosmani and Rodriguez. After the group picked her up, Duran sat in the back seat next to defendant. When they were driving, she saw defendant fire his gun once or twice out of the window. Duran saw the gun in defendant's hand and described it as a black semiautomatic gun. Duran explained that this made her feel uneasy, so she jumped out of the car at a red light. Mulosmani and Rodriguez were telling her to get back into the car. Since her phone was dying and she did not want to be stranded, she did. Then, the group drove to a gas station. While waiting in the car at the gas station, Duran heard a gunshot and then saw defendant and Mulosmani run back to the car. When defendant got into the back seat, Duran started recording on her phone. Duran testified that defendant had his gun resting on his leg and said, "get me out of here." In the recording, defendant yells, "get me the fuck out of here" and "get me out of here" multiple times. Duran explained that the group then left the gas station and went to pick up Rodriguez's sister. Then, they drove to Rodriguez's apartment in Berwyn. Duran felt uncomfortable, so she called an Uber to pick her up from Rodriguez's apartment and left.

¶ 13 The State presented additional testimony from a medical examiner, forensic scientist, Chicago police officer, and the arresting detective, Detective Criscione. For the defense, defendant testified that when Cionzynski lunged towards Mulosmani, defendant believed Cionzynski was armed. Defendant claimed that he shot Cionzynski in self-defense. The circuit court found "there was absolutely no self-defense" and found defendant guilty of first-degree murder. The circuit court sentenced defendant to 85 years' imprisonment, and this court affirmed defendant's conviction on direct appeal. See *People v. Mujkovic*, 2022 IL App (1st) 200717.

¶ 14 In 2023, defendant filed a postconviction petition, which advanced to the second stage. Defendant asserted claims of actual innocence, a *Brady* violation, and ineffective assistance of counsel. In support, defendant attached affidavits from Yolanda Valentin, Rodriguez's sister; Sanela Petrov; Edita Mujkovic, defendant's sister; and Aisha Cosic, defendant's mother. Valentin attested that although she was with the group after the shooting, defendant's trial counsel never interviewed her. She attested, in part, that Rodriguez was acting normally after the shooting and that defendant did not say anything in the car about taking anyone to the woods. Valentin also attested that she learned from her other sister Jessica that Rodriguez had been in a romantic relationship with Detective Criscione at the time of defendant's trial.

¶ 15 In Petrov's affidavit, she attested that Rodriguez and Mulosmani spent the night at her house after the shooting. At one point, Rodriguez left and came back on her own accord, and she never expressed any fear. Petrov also stated that she was never interviewed by trial counsel.

¶ 16 Edita Mujkovic attested that Rodriguez's sister Jessica told her that Rodriguez was in an intimate relationship with Detective Criscione during defendant's trial. Edita stated that she told

trial counsel what she had learned about the relationship and asked him to look into it, but he never investigated.

¶ 17 Cosic provided a similar affidavit, attesting that she learned from Edita of the relationship between Rodriguez and Detective Criscione and told trial counsel, but he never investigated. Cosic also attested that she told trial counsel Valentin and Petrov would be important witnesses for him to speak to. Cosic told trial counsel that Valentin was with the group after the shooting and that Rodriguez and Mulosmani were at Petrov's house that evening. Cosic stated that to her knowledge, counsel never interviewed them.

¶ 18 In defendant's petition, he also included information that the charges against him for the Oak Park shooting were dropped after his trial in 2020. The State filed a motion to dismiss defendant's petition, which the circuit court granted. This timely appeal followed. Ill. S. Ct. R. 651(a) (eff. July 1, 2017).

¶ 19 II. ANALYSIS

¶ 20 A. Ineffective Assistance of Counsel

¶ 21 Defendant argues the circuit court erred in dismissing his ineffective assistance of counsel claim where he made a substantial showing that his trial counsel's performance was unreasonable and that he was prejudiced. Specifically, defendant argues that trial counsel's performance was deficient where he failed to impeach Rodriguez, the State's witness. Namely, defendant argues trial counsel (1) failed to interview or call two critical witnesses, Valentin and Petrov, (2) failed to investigate an alleged romantic relationship between Rodriguez and Detective Criscione, and (3) failed to rebut Rodriguez's testimony about the Oak Park shooting using information from the police report. Defendant argues he was prejudiced by trial counsel's performance because

Rodriguez was critical to defendant's first-degree murder conviction and the circuit court's rejection of defendant's self-defense claim. The State argues that trial counsel's performance was not deficient and was sound trial strategy where counsel extensively cross-examined Rodriguez. The State argues defendant was not prejudiced where the evidence of his guilt was overwhelming, including video evidence and two eyewitness accounts inconsistent with self-defense. Further, the State argues that Rodriguez's testimony was largely corroborated by Duran's testimony and impeachment would have been cumulative. We review the dismissal of a postconviction claim at the second stage *de novo*. *People v. Pingelton*, 2022 IL 127680, ¶ 28.

¶ 22 The Post-Conviction Hearing Act provides a three-step process for convicted defendants to assert that their constitutional rights were substantially denied. *Id.* ¶¶ 32-34; 725 ILCS 5/122-1 *et seq*. (West 2022). At the first stage, the circuit court reviews the postconviction petition and determines whether it is frivolous or patently without merit. *Pingelton*, 2022 IL 127680, ¶ 32. At the second stage, the State may file a motion to dismiss. *Id.* ¶ 34. "In deciding a motion to dismiss, the circuit court must determine whether the petition and accompanying documentation make a substantial showing of a constitutional violation." *Id.* At this stage, all well-pled allegations not affirmatively rebutted by the record are taken as true. *People v. Domagala*, 2013 IL 113688, ¶ 35. If the petition survives dismissal, it advances to a third-stage evidentiary hearing. *Id.* ¶ 34.

¶ 23 As a threshold matter, the State argues that defendant's claims of ineffective assistance of counsel are forfeited since he failed to raise them on direct appeal. "A postconviction proceeding is not an appeal from the judgment of conviction, but is a collateral attack on the trial court proceedings. [Citation.] Consequently, issues that could have been raised on direct appeal but were not are forfeited." *People v. Petrenko*, 237 Ill. 2d 490, 499 (2010). Notably, however, "where a

defendant relies on matters outside the record, forfeiture does not apply." *People v. Barkes*, 399 Ill. App. 3d 980, 986 (2010). Defendant's claims that trial counsel was ineffective for failing to interview or call Valentin and Petrov and for failing to investigate a romantic relationship between Rodriguez and Detective Criscione are based on newly obtained affidavits from Valentin, Petrov, Edita Mujkovic, and Cosic. These affidavits were outside of the record on direct appeal, so defendant did not forfeit these claims.

¶ 24 However, defendant's claim that trial counsel was ineffective for failing to rebut Rodriguez's testimony about the Oak Park shooting was available on direct appeal. At defendant's sentencing hearing, trial counsel cross-examined Detective Criscione about the Oak Park shooting using the same information from the police report that counsel was allegedly ineffective for not using when cross-examining Rodriguez (the color of the car, the amount of people in the vehicle, the gender of the passengers, etc.). This questioning at defendant's sentencing hearing was part of the record on direct appeal, and defendant could have raised his claim then. Thus, defendant's claim that trial counsel was ineffective for failing to rebut Rodriguez's testimony about the Oak Park shooting is forfeited.

¶ 25 To succeed on a claim of ineffective assistance of counsel, the defendant must show (1) that counsel's performance was deficient and (2) that the defendant was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Deficient performance is that which falls below an objective standard of reasonableness. *Id.* at 687-88. For prejudice, the defendant must establish that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *People v. Griffin*, 178 Ill. 2d 65, 74 (1997). "The defendant must show that counsel's deficient performance rendered

the result of the trial unreliable or the proceeding fundamentally unfair." *Id.* Failure to establish either prong is fatal to a defendant's claim. *People v. Spiller*, 2016 IL App (1st) 133389, ¶ 37. Here, the circuit court concluded defendant did not make a substantial showing of prejudice. See *People v. Minniefield*, 2014 IL App (1st) 130535, ¶ 87 ("Since we conclude that defendant was not prejudiced by the alleged error, we may dismiss on that basis alone without further analysis.").

¶ 26 Defendant's central contention for prejudice concerns his claim of self-defense. Several witnesses provided relevant testimony. Handley, an eyewitness to the shooting, testified about how the events unfolded. He described how Mulosmani came up to him and started touching his pockets, and defendant flashed his gun. Handley put his hands up, saying he did not want any part of this. When Handley grabbed Mulosmani's hand, threw it away from him, and told Mulosmani to get his hands off of him, threatening to beat him, Mulosmani punched him in the face. When Handley's friend punched Mulosmani back, defendant shot his friend in the head. Ali, the cashier at the gas station, corroborated Handley's testimony that Mulosmani started touching and punching the two friends. When the victim pushed Mulosmani back, defendant shot him. Handley and Ali's accounts show defendant and Mulosmani harassing the victims, flashing a weapon, and instigating and escalating violence, negating defendant's claim of self-defense. See *Spiller*, 2016 IL App (1st) 133389, ¶ 22 ("In order to raise the defense of self-defense, the defendant must establish some evidence of each of the following elements: (1) force is threatened against a person; (2) the person threatened is not the aggressor; (3) the danger of harm was imminent; (4) the threatened force was unlawful; (5) he actually and subjectively believed a danger existed which required the use of the force applied; and (6) his beliefs were objectively reasonable." (Internal quotation marks omitted.)).

¶ 27 Contrary to defendant's assertions, the surveillance video further negates defendant's self-defense claim. The video shows Mulosmani approach Handley and Cionzynski with defendant close behind and shows Mulosmani draw Handley's attention to defendant's gun twice. Despite Handley's efforts to wave them away, Mulosmani initiated force and punched him. After a pause, he also punched Cionzynski. Once Cionzynski regained his balance, he moved towards Mulosmani with both hands visible, one on Mulosmani's chest and the other in the air in a fist. As the two traveled only a few steps, defendant pulled his gun out of his pocket and fired towards Cionzynski's head. Not only does the video show defendant and Mulosmani harassing Handley and Cionzynski and initiating violence, it also contradicts defendant's claim that Cionzynski reached to grab something out of his back pocket as he lunged back, before moving towards Mulosmani.

¶ 28 Testimony about what occurred before and after the shooting bolstered the contention that defendant did not kill the victim in self-defense. Amanda Duran testified that before she, Rodriguez, Mulosmani, and defendant went to the gas station, she was sitting next to defendant in the backseat when he fired a gun out of the car window. See *People v. Charles*, 238 Ill. App. 3d 752, 761-62 (1992) (explaining that evidence of a prior shooting was relevant to refute the defendant's self-defense claim because "it tends to negate inadvertence, accident, or other forms of innocent intent"). Duran also testified that after she heard gunshots at the gas station, defendant and Mulosmani ran back to the car, and the group drove away. Ali similarly testified that defendant and Mulosmani ran out of the gas station after the victim fell to the ground. See *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 59 ("Evidence of flight *** is competent circumstantial evidence that refutes the theory that defendant acted in self-defense."); see also *People v. Price*, 79 Ill. App. 3d

1112, 1118 (1979) (explaining evidence of flight tended to refute the defendant's testimony and theory of self-defense).

¶ 29 It is true that Rodriguez offered additional relevant testimony, including testimony about a second time defendant fired the gun before the gas station shooting, trips the group took before the shooting to pick up and load the gun, and various incriminating comments defendant made after the shooting. However, even disregarding Rodriguez's testimony entirely, we cannot say there is a reasonable probability the result would have been different. Thus, even if counsel impeached Rodriguez in the ways defendant now outlines, he cannot show prejudice.

¶ 30 Defendant argues that Rodriguez's testimony was critical to his conviction because the trial court explicitly relied on her testimony to reject defendant's self-defense claim and find intent for first-degree murder. However, the circuit court also heavily relied on the incident itself and the video of the shooting. While the circuit court did discuss the events leading up to the shooting in its judgment, its focus was on "[t]he desire by Mr. Mujkovic in particular to shoot the gun and cause havoc and damage." As discussed, Duran's testimony that defendant fired his gun out of the car window supports this conclusion alone.

¶ 31 Defendant cites *People v. Steidl*, 177 Ill. 2d 239, 256-57 (1997), to support his contention that counsel's failure to investigate impeaching evidence is prejudicial. In *Steidl*, however, the court found the evidence in the case was "closely balanced." *Id.* at 256. The same is not true here. Similarly, in *People v. Myles*, 2020 IL App (1st) 171964, ¶ 23, counsel's failure to investigate pending charges against the testifying victim was prejudicial where her "credibility was critical to the State's case." Here, without a substantial showing of prejudice, the circuit court did not err in dismissing defendant's ineffective assistance of counsel claim.

¶ 32 B. *Brady*

¶ 33 Defendant argues the circuit court erred in dismissing his *Brady* claim where the State suppressed evidence of a romantic relationship between Rodriguez and Detective Criscione, who both testified for the State. See *Brady v. Maryland*, 373 U.S. 83 (1963). Defendant argues the relationship between a key witness and an investigating detective shows bias and a motive to assist the State. Defendant contends this evidence was material to his guilt because Rodriguez was the linchpin of the State's case on intent. The State argues defendant's claim is not well-pled where the affidavits alleging the romantic relationship are double hearsay. The State also argues that there is no *Brady* violation where defense counsel was aware of the alleged relationship prior to trial. Moreover, the State contends that the evidence was not material because there is no reasonable probability the result of defendant's proceeding would have been different even if Rodriguez was impeached with the alleged relationship. We review the dismissal of a claim at the second stage *de novo. Pingelton*, 2022 IL 127680, ¶ 28.

¶ 34 First, the State again argues that defendant's *Brady* claim is forfeited. The State claims defendant forfeited his claim because defendant alleges that trial counsel was informed about the relationship prior to trial. However, the affidavits supporting defendant's *Brady* claim were the result of postconviction investigation and are outside of the record on direct appeal. See *People v. Veach*, 2017 IL 120649, ¶ 47 ("Procedural default does not, however, preclude a defendant from raising an issue on collateral review that depended upon facts not found in the record."). Defendant, therefore, has not forfeited his claim.

¶ 35 "As stated by the United States Supreme Court in *Brady*, the prosecution must disclose evidence that is favorable to the accused and material either to guilt or punishment." (Internal

quotation marks omitted.) *People v. Harris*, 206 Ill. 2d 293, 311 (2002). "Evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id.* "Therefore, in order to succeed on a *Brady* claim, the defendant must show that: (1) the evidence is favorable to the defendant because it is either exculpatory or impeaching; (2) the evidence was either wilfully or inadvertently suppressed by the State; and (3) prejudice ensued to the defendant." *People v. Burt*, 205 Ill. 2d 28, 47 (2001). The standard for materiality, or prejudice, under *Brady* is the same as the prejudice standard under *Strickland* for evaluating claims of ineffective assistance of counsel. See *United States v. Bagley*, 473 U.S. 667, 682 (1985); *People v. Carballido*, 2015 IL App (2d) 140760 ¶ 66.

¶ 36 For the same reasons defendant could not make a substantial showing of prejudice for his ineffective assistance of counsel claim, he cannot make a substantial showing of prejudice here. Even considering the alleged romantic relationship, any impact that evidence would have on Rodriguez's testimony does not "put the whole case in such a different light as to undermine confidence in the verdict." See *People v. Morales*, 2019 IL App (1st) 160225, ¶ 36. Moreover, Detective Criscione's role in the State's case was minimal. He testified briefly about how he was present for defendant's arrest, and he identified various pictures of defendant as truly and accurately reflecting his appearance and tattoos. Any prejudicial effect that the alleged relationship would have had on Detective Criscione's testimony does not change our conclusion that defendant cannot show a reasonable probability that the result of his proceeding would have been different. Thus, defendant cannot make a substantial showing that the evidence is material, and the circuit court did not err in dismissing his *Brady* claim.

¶ 37 C. Actual Innocence

¶ 38 Defendant argues the circuit court erred in dismissing his actual innocence claim because the evidence in his attached affidavits is newly discovered and significantly impeaches Rodriguez's testimony about defendant's behavior before and after the shooting. Defendant also argues that the evidence that the charges against him for the Oak Park shooting were dropped after trial is newly discovered evidence that would probably change the result upon retrial. The State argues that defendant failed to demonstrate his evidence could not have been discovered earlier through due diligence. The State also argues defendant's evidence is immaterial and would not change the result on retrial where the evidence at trial was overwhelming. We review the dismissal of a claim at the second stage *de novo. Pingelton*, 2022 IL 127680, ¶ 28.

¶ 39 "To establish a claim of actual innocence, the supporting evidence must be (1) newly discovered, (2) material and not cumulative, and (3) of such conclusive character that it would probably change the result on retrial." *People v. Robinson*, 2020 IL 123849, ¶ 47. "Newly discovered evidence is evidence that was discovered after trial and that the petitioner could not have discovered earlier through the exercise of due diligence." *Id.* Evidence is material if it is relevant and probative of the defendant's innocence. *People v. Coleman*, 2013 IL 113307, ¶ 96. Evidence is cumulative if it adds nothing to what was already before the jury. *People v. Molstad*, 101 Ill. 2d 128, 135 (1984). Finally, "conclusive means the evidence, when considered along with the trial evidence, would probably lead to a different result." *Coleman*, 2013 IL 113307, ¶ 96.

¶ 40 In their affidavits, Petrov and Valentin, who state they were never interviewed by defendant's trial attorney, provide their accounts of what occurred after the shooting. Petrov described Rodriguez and Mulosmani's behavior when they spent the night at her house the evening

after the shooting. Valentin attested to what happened in the car once she was picked up after the shooting and what occurred after the group arrived at defendant's apartment in Wrigleyville. Although Valentin stated she was never interviewed by trial counsel, at all the relevant times in her affidavit, she was with defendant. Defendant knew that Valentin could testify to what she observed after the shooting. See *Robinson*, 2020 IL 123849, ¶ 53 (explaining that the defendant's evidence could have been discovered earlier through due diligence where the "affidavit demonstrates that the information contained therein was known to him before trial").

¶ 41 Moreover, defendant's mother, Cosic, attested that she informed defendant's trial counsel that Petrov and Valentin would be important witnesses to speak to. According to her affidavit, Cosic specifically advised trial counsel that Rodriguez and Mulosmani went to Petrov's house after the shooting and that Valentin was picked up by the group right after the shooting. Thus, trial counsel knew of Petrov and Valentin, and what information they could provide, before trial. Defendant has not provided any explanation for why he or trial counsel could not have discovered their testimony through due diligence. See, *e.g.*, *People v. Ayala*, 2022 IL App (1st) 192484, ¶¶ 136-141 (explaining evidence could not have been discovered through due diligence where witnesses would have asserted their fifth amendment right to avoid self-incrimination, were made unavailable through threats or intimidation not to testify, were recanting trial testimony, or counsel was laboring under a conflict of interest); *People v. Wilson*, 2025 IL App (1st) 230027, ¶ 45 ("It is the petitioner's burden to show that there was no lack of due diligence.").

¶ 42 Similarly, Valentin attested that she learned from her sister Jessica that Rodriguez had been in a relationship with Detective Criscione. However, according to defendant's mother and sister's affidavits, they informed defendant's trial counsel about the potential relationship before trial.

Defendant has not shown that the information in Petrov and Valentin's affidavits could not have been discovered through due diligence. Thus, defendant has not shown that this evidence is newly discovered, and we need not consider it further. See *People v. Ealy*, 2024 IL App (1st) 221748, ¶¶ 60-61.

¶ 43 Defendant argues that it does not matter if he knew of Valentin and Petrov before trial because whether the evidence is newly discovered is based on the information itself, not the source. It is true that "[i]n an actual innocence claim, it is the evidence in support of the claim that must be newly discovered, not necessarily the source." (Internal quotation marks omitted.) *People v. Fields*, 2020 IL App (1st) 151735, ¶ 48. However, this does not alter the requirement that the new evidence could not have been discovered through due diligence. See *Coleman*, 2013 IL 113307, ¶¶ 96, 100. "In the case at bar, the witnesses, from whom defendant submits affidavits, were all known at the time of trial, and no explanation is offered as to why their statements could not have been discovered and obtained earlier through the exercise of due diligence." *Ealy*, 2024 IL App (1st) 221748, ¶ 60.

¶ 44 All that remains in support of defendant's actual innocence claim is the evidence that the charges against defendant for the Oak Park shooting were dropped in 2020 after defendant's trial. Assuming this constitutes newly discovered, material, and non-cumulative evidence, we cannot say this evidence "places the trial evidence in a different light and undermines the court's confidence in the judgment of guilt." (Internal quotation marks omitted.) *People v. Cox*, 2024 IL App (1st) 230330, ¶ 48. Once a defendant is convicted and sentenced for an offense, there are various reasons why other charges against him may be dropped. Further, the Oak Park shooting was not the only previous incident in which defendant fired a gun before the gas station shooting.

Another time that night, defendant similarly fired his gun out of the car window. Thus, even without the testimony about the Oak Park shooting, our confidence in the verdict remains. Defendant therefore cannot make a substantial showing of actual innocence, and the circuit court did not err in dismissing the claim.

¶ 45 III. CONCLUSION

¶ 46 The judgment of the circuit court of Cook County is affirmed.

¶ 47 Affirmed.