2023 IL App (1st) 210498-U

No. 1-21-0498

Order filed September 29, 2023.

First Division

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. 09 CR 00762
	)	
WILLIAM BALFOUR,	)	The Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: This court affirmed the judgment of the circuit court denying defendant leave to file his second successive petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq*. (West 2018)) because he failed to establish a colorable claim of actual innocence.

¶ 2 Defendant William Balfour appeals from the denial of leave to file his second successive petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2020)). On appeal, defendant contends he raised a colorable claim of actual innocence by pointing to complaints showing that one of the arresting police officers in his case had multiple prior

accusations against him, all of which defendant claims demonstrated a pattern of misconduct and fabrication of evidence. Defendant contends that this newly discovered evidence, if taken as true, was of such a conclusive character that it would have changed the result at trial. We affirm.

¶ 3 BACKGROUND

¶ 4 We recite only those facts relevant to this appeal, as the direct appeal sets forth the voluminous and detailed trial proceedings. See *People v. Balfour*, 2015 IL App (1st) 122325. Defendant was arrested and charged with murdering the family members of his wife, Julia Hudson, including her brother, Jason Hudson (age 29), mother, Darnell Donerson, and son, Julian King (age 7), after Julia and a number of witnesses implicated defendant in the crimes.

¶ 5 Trial evidence showed that as of October 2008, defendant and Julia had been separated for 8 months, although they still maintained contact and intimacy despite defendant's repeated threats to kill Julia and her family if she did not resume her marital relationship with him. On October 24, 2008, the morning of the murders, defendant first asked his friend for help with his car and sold the friend crack cocaine, relaying that he was carrying both drugs and a gun. Defendant then showed at the Hudson home around 8 a.m., peering inside, before Julia allowed him to enter. He smelled of alcohol and wanted to discuss the fact that she was seeing another man. When she left for work just before 8:30 a.m., she locked the front door, with her mother, brother, and child, inside. Defendant was standing in front of her house. Around 9 a.m., neighbors heard shots fired near the Hudson home.

¶ 6 About 2:30 p.m., Julia returned home to find her brother and mother dead and her child missing, along with her brother's Chevrolet Suburban SUV (although Julian was also later found dead inside the SUV, where forensic evidence showed he had been shot). Julia immediately reported defendant as a possible perpetrator to police, and later that afternoon, police entered the

home of defendant's paramour, where he was staying, and arrested him after he attempted to flee. On arresting defendant, Sergeant James Sanchez discovered defendant possessed a cell phone, a Chicago Transit Authority (CTA) pass, and three sets of keys, one later determined to be those corresponding with Jason's SUV.

¶ 7 Defendant denied involvement in the crimes, claiming that he left the premises after seeing Julia and around 8:30 a.m. parked his broken car near Robeson High School (some blocks away from the Hudson home). He stated that around 9 a.m., he took the CTA to his paramour Shonta Cathey's west-side home, 1925 S. Spaulding. Although defendant claimed he arrived at that home around 10 a.m. and remained there the rest of the day, the evidence contradicted this alibi.

¶ 8 First, his paramour Cathey testified that defendant in fact showed at her house around noon wearing a white hoody, black pants, and carrying a bottle of Hennessy liquor. He left about ten minutes later after grabbing some boots, promising to return. A few hours later, he returned to her home wearing a different jacket and shoes. He directed her to say that if anyone asked, he'd been at her house since 10 a.m. Defendant then stated that he had shot Hudson's mother and brother at their home. When Cathey inquired about the "little boy," defendant said he was outside and she had "nothing to worry about."

¶ 9 Second, William Graham, a neighbor of Cathey's, also saw defendant around noon on the day of the murders driving a white SUV, resembling the car of Julia's dead brother. Graham, who was just about to watch the afternoon news, saw defendant (the driver's side was closest) from Graham's living room window and noted there was a speed bump at that juncture in the road, so the SUV had to slow down to go over the bump. Graham recognized defendant because he had seen him several times before but noted he had never seen defendant driving the SUV, as

he usually drove a green Chrysler. Graham saw defendant park the SUV in a nearby vacant lot, although there were free spaces right by Cathey's home where defendant usually parked. Defendant exited with a bottle of Hennessy. He was wearing a light hoody and blue jeans. Defendant returned about 10 minutes later and left in the SUV. Graham performed an in-court identification of defendant and also identified Jason's SUV as the vehicle defendant was driving. The surveillance video taken in the morning before the murders showed defendant was wearing the same white hoody and dark pants that Graham and Cathey described.

¶ 10 Third, several friends of defendant's testified about phone calls and/or text messages in the afternoon on the day in question, wherein defendant directed them to say he was "out west all day."

¶ 11 Fourth, defendant's friend Quincy Brown testified that around 4 p.m. on the day of the murders, defendant called requesting help with his car. Defendant put Brown on hold. On returning to the call, defendant told Brown that his wife was on the other line and was asking why he killed her mother and brother. Defendant stated that he had "got into it with that bitch-ass nigga [*sic*]," a reference to Jason. A half an hour later or so, Brown called defendant (who by then was implicated in the murders), stating that he was all over the news. Brown asked defendant if he "did it," to which defendant responded, "it's bigger than me," and hung up the phone.

¶ 12 Fifth, the CTA bus pass discovered on defendant's person had not been used on October 24, contrary to his statement otherwise. The SUV was discovered several days later (on October 27, 2008) some blocks away and within the vicinity of the west-side home where defendant stayed and with Julian's dead body inside. The gun used in the murders was found a half block from the SUV, and multiple witnesses identified it as Jason's gun. Meanwhile, defendant's own

vehicle was discovered within the vicinity of the Hudson home, near Robeson High School. His own car keys were never recovered, nor was the white hoody he was seen wearing in the morning/afternoon on the day of the murders.

¶ 13 Sixth, cell phone evidence suggested defendant's phone was near the Hudson home between about 7:30 a.m. and 8:45 a.m. on the day in question. Then, there was no cell phone activity on his phone between about 9 a.m. and 1 p.m., during the time of the murders. Around 1 p.m., the phone pinged a tower near 20th and Western. All later activity was near Cathey's home at 1925 S. Spaulding. In addition, testimony and a surveillance video contradicted defendant's claim during his interrogation that he had been wearing the clothes in which he was arrested all day.

¶ 14 Last, multiple witnesses saw defendant with Jason's gun, which ballistics evidence showed to be the murder weapon, and one witness reported defendant had the gun only days before the murders. In addition, gunshot residue was found on the steering wheel of defendant's own vehicle and trace particles or transfer particles on his clothing that he wore in the early morning and early afternoon.

¶ 15 Defendant's theory at trial was that Jason ran a drug house and one of his enemies must have perpetrated the crime. Defendant also honed in on evidence relating to the police work regarding the SUV keys found on defendant's person. Defendant, in fact, only called two police officers for his case in chief, using one to challenge the collection of the keys. On that point, the combined trial evidence showed that although Sergeant Sanchez turned over the keys to his partner and Detective Kelly at the police station on October 24, 2008, the keys were then placed in the sergeant's office at the station, which was manned 24 hours a day. On October 24, Chicago police detective Thomas Kelly interviewed defendant but did not confront him about the

keys. On November 8, Detective Kelly filed a police report listing over 28 items of evidence recovered in the case, including the CTA card, but there was no mention of the keys. Chicago police detective Thomas Carr inventoried the keys on November 22, almost a month after the shooting, and the next day Detective Kelly filed a police report about the keys being recovered from defendant, also noting they had been kept in the sergeant's office. The police did not try the keys collected from defendant in the SUV until three years after the murder, on September 22, 2011, and they fit. From this evidence, in closing, defendant theorized that defendant never had any keys on his person, and defendant suggested they had been planted on defendant.

¶ 16 The jury nonetheless found defendant guilty of three counts of first degree murder, as well as home invasion, aggravated kidnapping, residential burglary, and possession of a stolen motor vehicle. He was sentenced to life in prison. This court affirmed the judgment of the circuit court on direct appeal, finding there was probable cause to search defendant and his cell phone data and the evidence was sufficient to establish beyond a reasonable doubt defendant's guilt. See *id.*

¶ 17 Defendant subsequently filed a petition under the Act claiming ineffective assistance of counsel for failure to investigate evidence involving Jason Hudson's SUV keys to impeach a witness, among other claims. On appeal, this court affirmed the dismissal of this petition after granting the State Appellate Defender's motion for leave to withdraw as counsel. Defendant then filed a successive postconviction petition, claiming actual innocence and again ineffective assistance of trial counsel regarding the keys to Jason Hudson's SUV. The circuit court denied leave to file this petition.

¶ 18 On January 11, 2021, defendant filed the instant second successive postconviction petition, wherein he argued *inter alia* actual innocence based on newly discovered evidence. He

alleged a pattern of abuse and misconduct by Sergeant Sanchez, the officer who arrested him, dating back to 2006. Defendant noted that he knew of at least seven defendants whose cases were impacted by Sanchez's "illegal methods of threatening & tampering with evidence, planting evidence, excessive forcible entry, withholding evidence, destroying evidence, fabricating evidence, falsifying reports, improper detention & conducting such acts without warrants." Defendant asserted that absent this evidence of misconduct, he was unable "to properly challenge the credibility" of Sergeant Sanchez's testimony in his case.

¶ 19 Defendant attached documents in support of these allegations, claiming they constituted newly discovered evidence that was material and of such a conclusive character that the evidence would have change the result at his suppression hearing and at trial. Defendant, for example, appended federal court complaints and a state court complaint by other individuals against various officers, including Sergeant Sanchez. The complaints alleged officers conducted illegal searches and seizures and property destruction; committed fabrication of evidence; the illegal shooting of complainants stopped in their car; perjury; witness coercion; conducted improper lineups, along with encouraging false identification testimony; and framed a plaintiff for a murder he didn't commit. Defendant maintained he was tried and convicted of offenses that he did not commit.

¶ 20 The circuit court denied defendant leave to file his petition. This appeal followed.

¶ 21 ANALYSIS

¶ 22 The Act provides a procedural mechanism through which a criminal defendant can assert that his federal or state constitutional rights were substantially violated in his original trial or sentencing hearing. 725 ILCS 5/122-1(a) (West 2018); *People v. Davis*, 2014 IL 115595, ¶ 13. The Act contemplates the filing of only one petition without leave of court, and any claim not

presented in an original or amended petition is waived. *Davis*, 2014 IL 115595, ¶¶ 13, 14. A defendant faces immense procedural default hurdles when bringing a successive petition that are lowered in very limited circumstances. *People v. Dorsey*, 2021 IL 123010, ¶ 32. As such, successive petitions are highly disfavored. *People v. Bailey*, 2017 IL 121450, ¶ 38.

¶ 23 Yet, those seeking to relax the bar against postconviction petitions may raise a freestanding claim of actual innocence, in which it's alleged that newly discovered evidence makes a persuasive showing that the defendant did not commit the charged offense and was therefore wrongfully convicted. *People v. Prante*, 2023 IL 127241, ¶ 73. To obtain relief when raising such claim, the newly discovered evidence offered by a defendant must be material, noncumulative, and of such a conclusive character that it would probably change the result on retrial. *Id.* ¶ 74; see also *People v. Edwards*, 2012 IL 111711, ¶ 24 (the defendant's supporting documentation must raise the probability that it's more likely than not that no reasonable juror would have convicted him in light of the new evidence). "New" means the evidence was discovered after trial and could not have been discovered earlier through the exercise of due diligence. *People v. Coleman*, 2013 IL 113307, ¶ 96. Material means the evidence is relevant and probative of the defendant's innocence, and noncumulative means the evidence adds to what the jury heard. *Id.* Last, and of the most importance, conclusive means the evidence, when considered along with the trial evidence, would probably lead to a different result. *Id.*; *People v. Robinson*, 2020 IL 123849, ¶ 47. Stated differently, leave of court should be denied only where it is clear, from a review of the successive petition and the documentation provided by the petitioner that, as a matter of law, the petitioner cannot set forth a colorable claim of actual innocence. *Edwards*, 2012 IL 111711, ¶ 24. Our review is *de novo*. *People v. Sanders*, 2016 IL 118123, ¶ 31.

¶ 24 Defendant maintains that he has met this burden. The State, at the outset, maintains defendant failed to raise an actual innocence claim in his petition, which largely focused on arguing an illegal search and seizure. The State maintains defendant is raising his claim for the first time on appeal. We disagree. The title of defendant's petition is "motion for leave to file second successive post-conviction petition a free standing claim of actual innocence." In the petition, although somewhat inartful, defendant argued he was tried and convicted of offenses that he didn't commit, and in support, he provided the documentation and allegations set forth above. He further noted that Sergeant Sanchez searched defendant and was alleged to have taken the keys from his person and Sergeant Sanchez had "procured the evidence against him that's fraudulent," causing prejudice. Liberally construing the *pro se* petition, as we must, defendant adequately raised the same substantive claim in his petition as on appeal. Contrary to the State's contention otherwise, he has not forfeited the claim, and we proceed to review it on the merits. See *Sanders*, 2016 IL 118123, ¶ 31; *People v. Weathers*, 2015 IL App (1st) 133264, ¶ 22.

¶ 25 On the merits, defendant more specifically contends the complaints attached to his petition demonstrate a pattern of misconduct and fabricating evidence by Sergeant Sanchez. He argues this evidence, if presented at trial, would have "irreparably damaged" Sergeant Sanchez's credibility and supported the defense theory that the SUV keys were never in defendant's possession, but instead, planted on him by police. Defendant contends this newly discovered evidence is of such a conclusive character that it undermines confidence in the verdict.

¶ 26 The State responds that the evidence defendant appended to his postconviction petition was not newly discovered. Notably, defendant's jury trial began on April 23, 2012. As the State observes, all but one of the civil court complaints on which defendant relies was filed *before* his jury trial. The one remaining civil court complaint, *Blackmon v. City of Chicago* (Case: 1:19-

cv007767), was filed several days before defendant's first successive postconviction petition (which was itself filed on February 8, 2019).

¶ 27 Defendant acknowledges a majority of the complaints were filed prior to his trial, but nonetheless claims "the evidence was new as no facts about Sanchez's" misconduct were presented at trial. He relies on an unpublished decision, *People v. Bryant*, 2021 IL App (1st) 200165-U, wherein the defendant was found guilty of attempted murder and the aggravated assault of an Officer Coleman, the only eyewitness to identify defendant as the shooter. In *Bryant*, the defendant filed a first-stage postconviction petition, which this court found alleged actual innocence. He attached to his petition a Chicago Tribune newspaper article reporting that Officer Coleman had sustained an obstruction of justice charge in federal court based on his illegal activity committed the same month as the defendant's trial. Plus, the officer had amassed over 60 complaints during his 17 years as a police officer. This court reversed the summary dismissal of the defendant's petition after finding, among other things, that the attached evidence was newly discovered because the federal indictment and conviction for obstruction of justice occurred years after the defendant's trial. As to the 60 complaints, the court added that they were newly discovered even if they arose prior to trial because given " 'the sensitive nature of police investigations and the sheer scale of the criminal justice system, it is unreasonable to expect defense counsel to discover' all allegations of police misconduct or abuse." *Id.* ¶ 49, citing *People v. Tyler*, 2015 IL App (1st) 123470, ¶ 162. *Bryant* thus concluded that the complaints could not have been discovered through the exercise of due diligence.

¶ 28 This case is distinguishable for several reasons. First, the defendant in *Bryant* presented actual "evidence," a conviction, in addition to complaints. Here, defendant has only presented us with allegations of misconduct. We question whether that alone can constitute "evidence" for the

purposes of establishing an actual innocence claim. Second, and most significantly, defense counsel was aware that Sergeant Sanchez was a testifying witness, and one of defense counsel's main trial theories challenged Sergeant Sanchez's testimony that he had recovered the SUV keys from defendant. During closing, defense counsel noted Sergeant Sanchez had been impeached as to how many keys he recovered from defendant, and the November 8 police report failed to identify the recovered keys. Defense counsel asserted "they [the police] didn't have those keys. There is another circumstantial piece of evidence that tells you that [defendant] never had those keys." Defense counsel again stated, "Circumstantial evidence that the keys are not what they say they are and did not come the way they say they came." And, last defense counsel stated, "[t]hose keys showed how desperate the State was. They were never in possession of William Balfour." Defense counsel thus implied, if not outright argued, that the keys were planted on defendant and police were lying.

¶ 29 Defendant has not explained why his attorney could not have discovered the complaints filed prior to his 2012 trial through the exercise of due diligence. Moreover, unlike the complaints in *Bryant*, these were legal filings and public records. We believe that, given the defense theory emphasizing missteps by police as to the keys and suggesting the planting of evidence, defendant's trial counsel could have easily discovered these complaints. Unlike in *Bryant*, defendant's petition is a successive petition and he thus bears a higher burden. While at the first stage, a petitioner need only allege the "gist" of a constitutional claim to establish that his petition is not frivolous and patently without merit, at the successive stage, "the standard for alleging a colorable claim of actual innocence falls between the first-stage pleading requirement for an initial petition and the second-stage requirement of a substantial showing" of a constitutional violation. *Robinson*, 2020 IL 123849, ¶ 58; see also *Prante*, 2023 IL 127241, ¶ 86

(noting, a defendant seeking to file a claim of actual innocence in a successive petition is held to a "high standard"); *People v. Hodges*, 234 Ill. 2d 1, 11 (2009). Defendant's assertions that the majority of evidence attached to his post conviction petition was newly discovered fall demonstrably short.

¶ 30 Defendant also has not explained why he could not have discovered the remaining federal complaint, *Blackmon* (filed after his trial but two days before his first successive postconviction petition), through the exercise due diligence. While that complaint could nonetheless be considered newly discovered evidence, we need not analyze this fact further since the "evidence" fails the other requirements for an actual innocence claim. See *People v. Beard*, 2023 IL App (1st) 200106, ¶ 43 (limiting the appellate court's consideration to only whether evidence was discoverable prior to trial and concluding, "forfeiture should not preclude consideration of evidence offered in support of such a claim"); *Tyler*, 2015 IL App (1st) 123470, ¶ 162; *but see People v. Wideman*, 2016 IL App (1st) 123092, ¶ 57 (noting, " 'if the evidence was available at a prior posttrial proceeding, the evidence is *** not newly discovered evidence' "); see also *People v. Miranda*, 2023 IL App (1st) 170218-B, ¶ 29 (where the claim failed one prong of the actual innocence test, the court declined to consider the other prongs).

¶ 31 With that said, we turn next to whether the cited evidence is both material and noncumulative; those respective terms, as set forth, mean the evidence is relevant and probative of the defendant's innocence, and adds to what the jury heard. *Coleman*, 2013 IL 113307, ¶ 96. The critical inquiry is whether there is sufficient similarity between the misconduct at issue in the present case and the misconduct shown in other cases, such that it may fairly be said the officers were acting in conformity with a pattern and practice of behavior. *People v. Jackson*, 2021 IL 124818, ¶ 34. This determination will necessarily depend on the unique facts of each

case. *Id*. Having reviewed the supporting documents in this case, we conclude there is no basis for further proceedings on defendant's claim that police did not obtain the key from defendant.

¶ 32 Defendant attached complaints from civil lawsuits alleging police misconduct. For example, in one federal court complaint, *Zamora v. Wier* (Case: 1:11-cv-07703), the complaint alleged police officers presented false information to obtain a warrant, then falsely accused Zamora of charges related to non-existent weapons, and illegally forced their way into his home and searched it. Although Sergeant Sanchez is a named party in this complaint, there are no allegations specific to him, leaving uncertainty as to his exact role in the alleged incident. All but one of the other attached complaints fail to similarly specify allegations against Sergeant Sanchez. The complaints are also incomplete, as they are missing numerous pages and paragraphs. Thus, contrary to defendant's claim on appeal, the complaints do not have probative value demonstrating a "widespread pattern of misconduct," critical to the defense's trial theory. See *Jackson*, 2021 IL 124818, ¶ 36; *People v. Vidaurri*, 2023 IL App (1st) 200857, ¶¶ 59-60.

¶ 33 Defendant attached only one federal complaint, *Blackmon*, which specifically identifies alleged wrongdoing by Sergeant Sanchez. *Blackmon* asserted that police misconduct led to the wrongful murder conviction of Blackmon, who spent some 15 years in prison for a crime he did not commit. Blackmon alleged his murder conviction rested solely on fabricated evidence by officers, including Sergeant Sanchez. He specifically asserted that Sergeant Sanchez improperly included Blackmon's photo in an array of suspects and falsely testified at trial that the victim's family members implicated Blackmon. Blackmon further asserted that Sergeant Sanchez conducted a suggestive lineup, leading to his identification as the offender.

¶ 34 While the claimed wrongdoing in *Blackmon* bears sufficient similarity to that claimed in this case, insofar as Sergeant Sanchez allegedly framed innocent individuals, *Blackmon* is a civil

lawsuit with only *allegations* of misconduct and no findings of wrongdoing. Thus, this lawsuit is not relevant to establishing a specific pattern and practice of evidence tampering and the wrongful implication of an accused. See *Jackson*, 2021 IL 124818, ¶ 38. Although defendant suggests this evidence could have been used to impeach the credibility of Sergeant Sanchez, it has already been declared that "mere evidence of a civil suit against an officer charging some breach of duty unrelated to the defendant's case does not raise an inference of bias or motive to testify falsely and 'is not admissible to impeach the officer.' " *Id.*, citing *People v. Coleman*, 206 Ill. 2d 261, 279 (2002); see also *Prante*, 2023 IL 127241, ¶ 86 (noting, impeachment evidence is typically insufficient to justify postconviction relief); *but see Robinson*, 2020 IL 123849, ¶ 78 (noting, the rules of evidence do not apply to postconviction hearings). In addition, we observe that defendant did not testify at trial. There was no disavowal of his being in possession of the keys, and there was no evidence of actual misconduct by police. The *Blackmon* case would thus only corroborate conjecture posed by defendant, which is simply insufficient at the successive petition stage to establish actual innocence. Based on the foregoing, defendant has not provided sufficient documentation establishing a pattern and practice of misconduct by Sergeant Sanchez, and thus the documents are not relevant or material. See *People v. Vidaurri*, 2023 IL App (1st) 200857, ¶¶ 59-60; *cf. People v. Brandon*, 2021 IL App (1st) 172411, ¶ 75 (finding evidence revealed a series of incidents, spread out over years, with the same officers suggesting similar abuse and coercion).

¶ 35 Last, we conclude that even assuming the documents, especially that involving *Blackmon*, were newly discovered and material evidence, they are not conclusive such that when considered along with the trial evidence, they would probably lead to a different result. See *Prante*, 2023 IL 127241, ¶¶ 74, 77-86; *Coleman*, 2013 IL 113307, ¶ 96; *Robinson*, 2020 IL

123849, ¶ 47. Here, as delineated on direct appeal, the circumstantial evidence establishing that defendant was the murderer and perpetrator of the crimes against Jason, Darnell, and Julian, was quite simply overwhelming. See *Balfour*, 2015 IL App (1st) 122325, ¶ 60 (summarizing the wealth of evidence against defendant); *cf. People v. McCoy*, 2023 IL App (1st) 220148, ¶ 14 (finding the actual innocence standard satisfied where there was limited evidence of guilt at trial, and the defendant proffered testimony that he was not involved in the crime).

¶ 36 Trial evidence established that defendant had threatened Julia and her family multiple times prior to the day in question, frequently stating that he would start by murdering Julia's family first and then Julia, herself. He was apparently unable to control his desired intention, as he relayed these threats, unprompted, to a 13-year-old neighborhood girl in a park and to the husband of Julia's coworker at a children's birthday party on August 23, 2008, about a month before the murders, while in possession of a gun. In August, he was seen outside Julia's window peering inside the Hudson home for the purpose of watching Julia and her new boyfriend. The husband of Julia's coworker also saw defendant at Julia's workplace in late September or early October of 2008, first slouched down in his car and looking around, then exiting it with a gun in his waistband. Defendant only returned to his vehicle and sped away when noticed by the coworker's husband. Multiple witnesses saw defendant with Jason's gun, the same used in the murders, and one witness reported defendant had the gun only days before the murders.

¶ 37 The morning of the murders, defendant was observed peering into Julia's bedroom. Julia left him at her home just prior to the murders, and cell phone evidence placed him in the vicinity around the time of the shootings. Defendant, who frequently used his cell phone to text and call people, then curiously had no cell phone activity between about 9 a.m. and 1 p.m., during the time of the murders. This evidence suggested that defendant had turned off his phone.

¶ 38 Later around noon, Graham, a retired neighbor of defendant's west side paramour, saw defendant drive by in Jason's SUV, where Julian was later discovered. This was unusual because defendant normally drove a green Chrysler. Rather than parking, as he normally did, by his paramour Cathey's apartment, defendant parked in the vacant lot by Graham's home. Graham testified that defendant exited the vehicle, wearing a light hoody (the same as captured on surveillance footage earlier in the morning) and carrying Hennessey. Cathey also testified that defendant showed at her apartment around noon carrying Hennessy. Defendant first directed Cathey to say he had been at her house since 10 a.m., but then essentially confessed that he had shot Julia's mother and brother at their home. Defendant stated the little boy was outside and unharmed, although that would prove to be a lie. Defendant also asked several friends to cover for him, saying he was "out west all day." Defendant then implicated himself to his friend, Brown. Contrary to defendant's contention otherwise, the CTA bus pass found on his person (a fact he does not contest) was never used.

¶ 39 The SUV and gun were discovered some blocks from Cathey's home on the west side, where defendant stayed. Defendant's keys to his own car were never discovered. In addition, gunshot residue was found on the steering wheel of defendant's own vehicle and trace or transfer particles on his clothing that he wore in the morning and early afternoon. The hoody and black pants which he wore earlier were never found. In short, defendant "was unable to establish an alibi for a large chunk of the day of the murders, a period that would have given him time to hide the stolen vehicle, discard the murder weapon and otherwise make it more difficult for investigators to uncover more evidence of his guilt." See *Balfour*, 2015 IL App (1st) 122325, ¶ 60. All this evidence showed defendant had the motive and opportunity to commit the crimes. Plus, the defense theory that an enemy of Jason's in the drug business committed the crimes was

contradicted by the fact that following the murders, nothing of value was missing in the Hudson home. A big screen TV, computers, blank checks, among other things, remained.

¶ 40 Defendant's claim on appeal also does not take into account the other Chicago police officers who testified that they were present when Sergeant Sanchez placed defendant under arrest, searched him, and then handed over the SUV keys, which were placed in the sergeant's office before being inventoried about a month later. Evidence as to Sergeant Sanchez does not necessarily call into question the credibility of the other officers who testified as to these matters, nor does it call into question testimony from Graham, a disinterested witness who was already familiar with defendant and who saw defendant driving Jason's SUV. Thus, defendant's focus on the importance of the SUV key, to the exclusion of other evidence, at trial and on appeal before this court is entirely misplaced. Contrary to defendant's contention otherwise, nothing in the record shows Sergeant Sanchez to be a "star witness" of the prosecution. Defendant has not established the alleged misconduct by Detective Sanchez would have been conclusive in any regard.

¶ 41 Last, defendant takes issue with our conclusion that the evidence was overwhelming, noting the jury deliberated three days in this case. Yet, our supreme court has stated that "the length of time a jury deliberates is not always an accurate indicator of whether the evidence was closely balanced." *People v. Walker*, 211 Ill. 2d 317, 342 (2004). Here, the trial took place over the course of 16 days with at least 12 days of testimony from multiple witnesses, many exhibits, and vigorous argument. Given the import of the trial, and the fact that the prosecution's case was "built slowly and steadily over many days," the length of jury deliberation was entirely reasonable. *Balfour*, 2015 IL App (1st) 122325, ¶ 14. In addition, having reviewed the questions the jury issued, we cannot say the three-day deliberation reflected closely balanced evidence.

¶ 42 Based on the foregoing, defendant cannot establish that the allegations involving Sergeant Sanchez in an unrelated case, when considered with the evidence at his murder trial, probably would have led to a different result. See *Prante*, 2023 IL 127241, ¶¶ 74, 86. Stated differently, defendant has not presented evidence that places the trial evidence in a different light or undermines our confidence in the judgment. See *Robinson*, 2020 IL 123849, ¶ 56; *Beard*, 2023 IL App (1st) 200106, ¶ 57. Defendant has failed to fulfill his burden of establishing that leave to file his petition should have been granted. See *Edwards*, 2012 IL 111711, ¶ 24. Here, it's clear from a review of the petition and documentation that the claims failed as a matter of law and the petition is insufficient to justify further proceedings. *People v. Smith*, 2014 IL 115946, ¶ 35.

¶ 43 CONCLUSION

¶ 44 For the reasons stated, we affirm the judgment of the circuit court denying defendant leave to file his second successive postconviction petition.

¶ 45 Affirmed.