

2019 IL App (1st) 163168-U

No. 1-16-3168

Order filed August 16, 2019

Fifth Division

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 03CR 13790
	)	
LEIVANTE ADAMS,	)	Honorable
	)	Stanley J. Sacks,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Rochford and Justice Hall concurred in the judgment.

**ORDER**

¶ 1 *Held:* Following an evidentiary hearing on defendant's successive postconviction petition, the trial court's determination that the witnesses' testimony was not so conclusive that it would probably change the result of defendant's trial was not manifestly erroneous.

¶ 2 Defendant Leivante Adams, who was convicted of first degree murder, appeals the denial of his successive postconviction petition after an evidentiary hearing. He argues that the trial court's denial of his petition was manifestly erroneous because the testimony of Tijatta and

Muhammad Williams, and Bridgette Rush, which implicated another man in the murder, and a forensic report, which indicated that no blood was found in defendant's car, constituted newly discovered, material, and noncumulative evidence that was so conclusive it would likely change the result on retrial.

¶ 3 For the reasons that follow, we affirm the judgment of the trial court.<sup>1</sup>

¶ 4 I. BACKGROUND

¶ 5 Defendant was convicted of the first degree murder of Raama Baker, who was severely beaten with a baseball bat on May 15, 2003, and died shortly thereafter. The trial court found defendant eligible for a death sentence, but sentenced him to 45 years' imprisonment. This court affirmed that judgment on direct appeal. *People v. Adams*, No. 1-05-0908 (2006) (unpublished order under Supreme Court Rule 23).

¶ 6 This is our second review of defendant's successive postconviction petition. In our 2013 opinion, we reversed the trial court's denial of defendant's motion for leave to file his successive petition. *People v. Adams*, 2013 IL App (1st) 111081 (defendant set forth a colorable claim of newly discovered evidence of actual innocence based on the affidavits of Tijatta and Muhammad Williams, who averred that they saw another man commit the offense for which defendant was wrongly convicted).

¶ 7 In 2016, the trial court held an evidentiary hearing on that successive petition and denied defendant's request for postconviction relief. On appeal, we review the trial court's judgment in light of the evidence presented at defendant's jury trial and postconviction evidentiary hearing, which are summarized below.

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<sup>1</sup> In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

¶ 8

A. Jury Trial

¶ 9 At the jury trial in 2004, the State's evidence showed that Raama and defendant had been in a relationship a couple of years before 2003 and had a son together. On March 20, 2003, defendant encountered Raama at the His & Hers Lounge on the 2200 block of South Damen Avenue in Chicago and punched her in the face. Defendant pled guilty to that offense, and Raama received an order of protection against him.

¶ 10 Barbara Oliver was defendant's mother. She lived on the 2200 block of South Wolcott Avenue with her sons Anthony Oliver, Terrence Whisby, and Terrence's girlfriend Kim Washington. Anthony and Terrence were defendant's younger brothers.

¶ 11 Terrence testified that some time prior to the offense at issue in this case, Raama tried to run him over with her car, so he went to where her car was parked and busted out her car windows. On the evening of May 15, 2003, Terrence was in his bedroom with Kim watching the basketball championship game. Barbara was in her bedroom sleeping, and Anthony was in his bedroom watching the game with defendant and Toni Washington, the mother of defendant's son. When Terrence answered the front doorbell and spoke to his friend at the door, Terrence noticed Raama walk by the house. Terrence returned to his bedroom. About 20 minutes later, he heard arguing, went outside and saw defendant on the porch and Raama on the sidewalk. It was obvious that Raama was intoxicated. Defendant approached Raama, and they both walked down the street, yelling at each other. Then they tussled and Raama fell to the ground. Terrence noticed that defendant had a two-and-one-half-foot stick or "something" in his hand. Terrence ran toward defendant, who was hitting Raama with the stick, and grabbed him. Defendant dropped the stick, walked away and did not return to the house that night. Raama was lying on the ground

motionless, and blood was on her face and the ground. Terrence picked up the stick and ran into the house. He tried to clean the stick and then gave it to Toni.

¶ 12 Two days later, the police took Terrence to the police station, held him for about two days, and then released him after he signed a written statement. Terrence loved defendant but was afraid of “getting ready to go down for something [he] didn’t do” and wanted to tell the police what he had seen and what defendant had done.

¶ 13 Terrence did not remember his testimony before the grand jury that defendant asked Raama what she was doing on his block; defendant went inside the house briefly and returned outside with a bat in his hands; and as defendant walked toward Raama, Terrence told him not to hit her with the bat.

¶ 14 Anthony testified that Bridgette Rush, defendant’s friend, might also have been at the house that evening. After the basketball game ended, Anthony played video games in his room and defendant left. Then, defendant came back inside the house, loudly saying that Raama “shouldn’t be walking down the block.” Anthony heard Kim come inside the house and Barbara go outside. Barbara told Anthony to call the police, which he did, telling them there was a large crowd on the corner fighting. Anthony called the police a second time to make sure they were coming. Anthony did not see defendant again that night.

¶ 15 According to Anthony’s grand jury testimony, he testified that when he looked outside, he saw Raama’s body lying on the ground and then saw defendant pull away in a car. Anthony called the police a second time, telling them a body was lying on the ground. Also, when defendant telephoned the next day, he asked if the police had been asking questions and said that

he snapped and started hitting Raama with the bat because he warned her not to walk on his street anymore but she called him a b\*tch and said she would walk wherever she wanted.

¶ 16 Kim Washington testified that she and Barbara were standing in the doorway on the front porch when Raama walked down the street. Terrence and defendant were also outside. Defendant gave Raama a warning and followed her with a bat in his hand. Terrence was walking with him. Kim went inside the house to get shoes for Barbara, heard a “thump,” and then returned to the front porch and saw Raama lying on the ground. Defendant was standing almost next to Raama with the bat in his hands. Terrence was holding defendant, and defendant dropped the bat. Terrence picked up the bat and brought it inside the house.

¶ 17 According to her grand jury testimony, Kim said that when Raama walked past the house, defendant went in the doorway of the house, grabbed a bat, and said that Raama was not supposed to be on his block. Also, when Kim returned to the doorway with Barbara’s shoes, Kim saw Raama lying on the ground and defendant hit her two or three more times.

¶ 18 Toni Washington testified that she was at Barbara’s house on the night in question. Defendant was also there with Rush. Toni and defendant went out to his car, which was parked across the street from the house, to talk. Terrence and several other people were on the front porch. When Raama walked by the house, defendant exited the car, talked to her, and then walked down the street with her. Toni remained seated in the car, facing the opposite direction from them and listening to music. Toni’s attention was drawn to the porch, where Rush, who did not like Toni sitting in the car with defendant, told Toni to get out of defendant’s car and talked about what she would do to Toni if she failed to exit defendant’s car. Then defendant returned to his car and Toni got in her own car, and they both drove off. Toni drove back to Barbara’s house

several minutes later to return a camcorder. Terrence gave her defendant's gym bag, which contained his basketball clothes and a black garbage bag. Toni drove home to Indiana, washed defendant's clothes and threw the garbage bag away without looking inside it. Toni asserted that the detective who interviewed her at work about this matter said that she probably would never see her son again if she did not cooperate. Toni also asserted that she agreed to testify before the grand jury because the State promised not to charge her for hiding the bat.

¶ 19 However, before the grand jury, Toni had testified that no promises or threats were made in exchange for her testimony. She also testified that while she was at Barbara's house, defendant went outside and then came back in and retrieved a bat. Toni followed him outside and he said that he was looking for Raama. Defendant and Toni went inside his car and listened to the radio and talked. When Raama walked by the house, defendant exited the car, picked up the bat, and talked to Raama as he walked down the street next to her. They stopped when they reached the alley, and defendant yelled at Raama, warning her not to be on this block unless she had the police with her. Raama and defendant turned away from each other and started walking away but then defendant turned around and hit Raama with the bat. Terrence tried to grab defendant but failed. Toni exited the car and walked toward them. As defendant hit Raama, she said, "I just want my baby." Defendant hit her with the bat six to seven times. Terrence took the bat into the house, washed it off, and put it in a black bag. Toni also went in the house, where everyone was sitting and talking. The police arrived and spoke to Anthony. After the police left and the blood was cleaned up, Toni and Terrence drove five minutes to the house of Toni's mother to get the camcorder that Anthony wanted to borrow. Defendant telephoned Toni and told her to see what was going on at Barbara's house. Terrence waited in the car while Toni

retrieved the camcorder. When they returned to Barbara's house, Anthony came outside with the bat in a black bag and put it in the back seat of Toni's car. Then Anthony and Terrence went in the house. Toni went home to Indiana and put the bag in a dumpster outside her apartment complex.

¶ 20 Barbara Oliver testified at the trial that she was asleep in her bedroom when Rush woke her up to talk about a job. Later, defendant walked in and told Barbara that Raama was on the block and threatened to call the police to have him arrested. Barbara told defendant to leave her house. She walked him to the door and saw him enter his car and drive off. Later, Barbara saw Raama walk down the street. Barbara went back into her house.

¶ 21 However, before the grand jury, Barbara had testified that she was on her porch with Kim and Rush, and Terrence was in front of the house. As Raama walked down the block, Barbara told her that she was not supposed to be there. Defendant, who was in his car with Toni, exited the car and walked past Barbara into the house, complaining that Raama would have done something to his car again if he had not been outside. Defendant went inside only to the front hallway and then immediately came back outside. Barbara asked Kim to get her shoes and then heard noises like something was being hit with a bat. Barbara walked down the street and saw Raama, bloodied and lying on the ground. Terrence, who had also been outside, grabbed defendant, and Barbara told defendant to leave. Defendant drove away in his car, but called Barbara later that night and apologized.

¶ 22 Defendant testified that he had been living in Aurora for about five years with his girlfriend Danielle Baker and their son. Defendant and Danielle owned and operated a trucking company together. While defendant was dating Danielle, he had an affair in 2001 with Raama

but they never had a “relationship” or a child together. On March 20, 2003, he drove to the lounge and talked to Raama about problems she was having with Terrence and Barbara. However, defendant and Raama started hitting each other, and someone broke up the fight. Then, defendant drove to Barbara’s house but stayed outside. Shortly thereafter, Raama and her boyfriend drove up to Barbara’s house, smashed into Barbara’s rental car, and drove off.

¶ 23 Regarding the night in question, defendant testified that he was at Barbara’s house watching the game. Barbara, Terrence, Anthony, Kim and Rush were also present. Toni came by later. After the game, defendant and Toni sat in his car and talked about their son. Rush was on the porch talking to Barbara. Then Raama walked by and slowed down to exchange words with Barbara and Terrence. Raama was hollering and Terrence was screaming. Defendant approached Raama, and they walked south on Wolcott Avenue, discussing the problems Raama was having with Terrence and Barbara. When they reached a vacant lot, defendant turned around and walked back to Barbara’s house. Terrence was at the bottom of the steps, swearing loudly. Then Barbara told defendant and Toni to leave, and they did. Defendant went back to Aurora. He spoke with Anthony the next day and learned what had happened to Raama. Defendant knew that Terrence was arrested a day or two after the incident. Around May 20, defendant learned that his family was talking to the police and the police were looking for him. Defendant contacted his attorney but went about his daily activities and did not speak to the police until May 30. Defendant insisted that Rush was not his girlfriend.

¶ 24

B. Successive Postconviction Petition

¶ 25 Defendant's successive postconviction petition that initiated the present litigation alleged that he was actually innocent based on newly discovered evidence: the supporting affidavits of Tijatta and Muhammad Williams and Rush.

¶ 26 In her December 7, 2010 affidavit, Tijatta attested that on the night of May 15, 2003, she was walking down the block of 6200 South Wolcott Avenue and saw a crowd of people in the middle of the street near the alley. She saw Mike walk up to a woman and strike her over the head with a bat. The woman fell and Mike struck her several more times. The crowd began to disperse, and Tijatta turned around and left the block. She did not see defendant at the scene. She did not report what she saw to the police because she was afraid that Mike would kill her. At an unspecified time, she ran into defendant's sons and their mother at a mall, felt bad for them, and felt compelled to tell the mother about the incident that put defendant in jail.

¶ 27 In his September 1, 2010 affidavit, Muhammad attested that on the night of the offense he left the His & Her Lounge and got in his car to go home. He "turned down 62nd South on Wolcott going north." He saw four or five people in the middle of the street, and saw a particular man, who definitely was not defendant, beat someone on the ground with a baseball bat. Muhammad quickly turned down the alley and headed home. Although Muhammad learned the next day that someone had been killed at that scene, he did not contact the police because he thought he would not have been helpful since he did not know the offender. Months later, Muhammad learned that defendant, whom Muhammad did not know personally but had seen playing basketball at a park, was arrested for the murder. After Muhammad moved to California and then returned to Chicago, he learned that defendant was in prison for the murder Muhammad

had witnessed. Nevertheless, Muhammad still did not go to the police because he thought he could get in trouble for not contacting them earlier. Muhammad came forward now because his conscience was weighing on him.

¶ 28 In her September 14, 2010 affidavit, Rush attested that at the time of the offense, she was inside Barbara's house, getting information about a job. Rush, Barbara, Anthony, Kim and Terrence were in the house, but defendant and Toni were sitting in defendant's car. When someone began arguing right outside the house, Barbara went outside and told defendant to leave. Rush stepped out onto the front porch and saw defendant get into his car and drive off. Terrence and Raama were in the middle of the street arguing, and Terrence, claiming that Raama tried to run him over, refused Barbara's repeated requests to come inside. Barbara called into the house, asking Kim to bring Barbara her shoes. Terrence followed Raama down the street while Terrence's friends, Mike and several other men, were standing near the alley. Mike, who had a bat in his hands, walked up to Raama and hit her over the head. Raama fell to the ground and Mike repeatedly hit her with the bat. Then Mike dropped the bat and ran from the scene with the other men. Barbara called into the house for Anthony to call an ambulance, and Terrence picked up the bat and ran inside the house. Rush went inside the house to get her keys and purse but, before she left, Terrence grabbed her by the throat, put a gun to her head, and said, "Keep your mouth shut or the same thing will happen to you." Because Rush feared for her life and the lives of her children, she refused to cooperate with the police who contacted her after the offense and refused to get involved when defendant, and "several people involved in his case" contacted her and asked her to come forward and tell what she knew. Despite her continued fear, Rush came forward now because it was "the right thing to do."

¶ 29

C. Evidentiary Hearing

¶ 30 The evidentiary hearing on defendant's successive postconviction petition began in March of 2016. The defense presented the eyewitness testimony of siblings Tijatta and Muhammad Williams, and Bridgette Rush.

¶ 31 Tijatta testified that she knew defendant through Danielle, the mother of his children. On an evening in May of 2003, Tijatta was at the His & Hers Lounge but did not see her brother there. Tijatta left the lounge sometime after midnight and walked down an alley alone to go home. (She lived at West 69th Street and South Winchester Avenue.) No one else was in the alley. She heard a commotion and saw Mike, a neighborhood "gangbanger," arguing with a woman in the middle of the street. Mike was six feet tall, had a light skin tone, and wore braids. Tijatta did not recognize the woman. Mike struck the woman with something, and Tijatta turned around and walked away. Tijatta did not recall how many times Mike struck the woman and did not know at the time whether the woman was badly hurt. Tijatta did not "think anything of" the incident at the time and did not report it to the police.

¶ 32 Tijatta did not know that anyone had been charged or convicted for the offense she had witnessed until the summer of 2010 when she saw Danielle and her children in the food court of a shopping mall. Tijatta asked Danielle about defendant and learned that he was in jail. Tijatta told Danielle she remembered "something about a girl getting beat up back then" and did not "remember seeing [defendant] there." Although Tijatta had seen Danielle 7 to 14 times between the time of the 2003 offense and their December 2010 mall encounter, they had never talked before about what Tijatta witnessed in May of 2003.

¶ 33 Danielle prepared an affidavit for Tijatta, which she signed on December 7, 2010, despite noticing the inaccurate statements that she knew defendant's nickname, "Tay"; remembered the exact date of the offense; was walking on the street when she observed the offense; saw a crowd of people near the alley; saw Mike walk up to the woman and hit her over the head with a bat; and saw the woman fall and the crowd disperse. Tijatta did not live with her brother Muhammad, and they were not living together at the time of the 2003 offense. Tijatta asserted that they never talked about the offense and had come to court that day separately.

¶ 34 Mohammad, however, testified that he and Tijatta had come to court that day together on the bus. Moreover, they first talked about the realization that they had independently witnessed the 2003 offense "maybe a week ago." Muhammad knew defendant from playing basketball in the park and knew his mother and brothers, but did not know Raama.

¶ 35 On the night of the offense, Mohammad was at the His & Hers Lounge, but Tijatta did not notice him. He left the lounge to drive to his girlfriend's home, which was at West 69th Street and South Normal Avenue. Mohammad claimed, however, that instead of driving a direct route to his girlfriend's house, he turned north onto Wolcott Avenue from West 63rd Street because he "was going to double back and go around." As he drove toward the scene of the offense, he saw what looked like a fight; four or five people were in the street in the middle of the block. Muhammad was over 50 feet away and did not recognize anyone or notice any women in the group. Muhammad saw a tall, light-skin-toned man who wore braids, but Muhammad viewed the man from his back and did not see his face. That man held something in his hand that he was about to swing and maybe attack or hit a person who was lying on the ground nearby. Muhammad did not "actually see contact being made" and made a right turn and drove into an

alley. He did not know what happened to the person on the ground at that time. Muhammad never saw defendant or his brothers Terrence and Anthony at the scene. Muhammad did not report the matter to the police because he did not know the offender. The next day, Muhammad saw on the news that a murder had occurred on Wolcott Avenue just north of West 63rd Street.

¶ 36 Muhammad testified that he did an internet search “months after” witnessing the May 2003 murder and learned that defendant had been charged with committing that offense. Nevertheless, Mohammad never tried to communicate with defendant. Once, however, Muhammad went to visit defendant in prison with a mutual friend, but “it was taking too long” and “they wanted to check all our pockets and belts and all off,” so Mohammad just told the mutual friend to “go ahead.”

¶ 37 Muhammad claimed that he had moved to California sometime in 2004 but had moved back to Chicago by October 15, 2009. He ran into defendant’s mother Barbara on some street on the south side of Chicago and they spoke. Muhammad could not recall exactly when or where their conversation occurred but he remembered it occurring within “months,” not years, of his discovery that defendant had been charged with the murder. Barbara told Muhammad that defendant was in prison and what he “was in prison for,” and Muhammad made “the connection” to the 2003 offense he had witnessed because they “kind of related.” This conversation with Barbara was the first time Muhammad told anyone about the murder he had witnessed. Later, Muhammad received a prepared affidavit from Barbara, which he signed, testifying that it was accurate. Muhammad acknowledged that when two investigators from the State’s Attorney’s office interviewed him at his workplace, he was not able to draw a map of the crime scene.

Moreover, when the investigators drew a map of the area and gave it to him, he still was not able to show on the map where the crime happened and his location.

¶ 38 Bridgette Rush testified that she was at the scene at the time of the offense and had testified before the grand jury in this matter in June of 2003. Rush testified that she lied before the grand jury when she said that she and defendant were “in a dating relationship.” Rush claimed that the lie was her attempt “just to get back” at Toni. Rush was defendant’s friend, had attended high school with his sister and brother, and sometimes had stayed at Barbara’s home. Rush “knew of” Raama but had never met her.

¶ 39 Rush testified that, at the time of the offense, she was inside Barbara’s house, talking with her. Terrence, who was outside the house, loudly said, “B\*tch, what are you doing on this block? You know you don’t supposed to be here.” Rush and Barbara went outside onto the porch. They saw Terrence walking next to Raama, who was walking south on Wolcott Avenue and trying to get away from him. Meanwhile, defendant was sitting in his car with Toni. Barbara told defendant to leave, so Toni exited defendant’s car and he drove away. Then, a few guys, including Dominick and Mike, who was Terrence’s friend and was in a gang, approached Terrence and Raama. Barbara had gone back inside the house to get her shoes. Rush observed Mike hit Raama over the head with a bat. Mike struck Raama a few times. After Raama fell to the ground, Mike hit her a few more times.

¶ 40 Rush ran inside the house and got her purse and keys to leave, but Terrence stopped her, put his hand around her throat and put a gun to her head. Terrence threatened Rush that “the same was going to happen to” her if she told anyone anything. Rush took his threats seriously

and never reported the matter to the police. Rush told the police that she had left Barbara's house before the commotion and beating occurred.

¶ 41 Rush stayed in contact with Barbara through the years, while defendant was arrested, convicted and imprisoned. Years later, Rush told Barbara what Rush had seen on the night of the offense, offered to help defendant, and signed an affidavit in 2010. In November of 2015, two investigators from the State's Attorney's office interviewed Rush at her home. Rush spoke to them even though their timing was bad because she was suffering from lupus, was trying to explain her serious health issues to her daughter, and Rush's medication affected her memory. Rush claimed that her memory was better when she signed her affidavit in 2010, and asserted that she had a clear memory of being threatened by Terrence and of Mike beating Raama. Rush denied telling the investigators that the large crowd had blocked her from seeing who swung the bat at Raama. Rush confirmed that she told the investigators that Terrence gave the bat to Toni, who got rid of it. Rush asserted that she told the investigators that Barbara had tried to get only Terrence into the house because defendant was not present when Raama was beaten.

¶ 42 After Rush's testimony, the defense submitted several exhibits into evidence and then rested.

¶ 43 When the evidentiary hearing continued in November of 2016, the State presented the testimony of James Stewart, an investigator with the State's Attorney's office. Stewart testified that Rush told him during the 2015 interview that she did not see who swung the bat and hit the victim because of the large crowd. Rush also reported that Barbara had tried to get Terrence and defendant to go inside the house during the commotion but Terrence "came back" after the beating, carrying the bat, and talked to defendant and Toni before defendant and Toni drove

away. Rush, however, also told the investigators that defendant and Toni had driven away before the beating. When the investigators pointed out this inconsistency, Rush responded that she could not remember all the specifics. Furthermore, after the investigators showed Rush her affidavit, she remembered that Mike had hit Raama with the bat.

¶ 44 On November 10, 2016, the trial court, after reviewing the entire transcript of the jury trial, denied defendant's petition for postconviction relief, finding that (1) the testimony of Tijatta, Muhammad, and Rush defied belief and was inconsistent with the evidence adduced at the jury trial, which had established defendant's motive and opportunity to kill Raama and his guilt; (2) Tijatta's and Muhammad's accounts about how they got involved in supporting defendant's postconviction petition were nonsensical; (3) Rush's testimony did not constitute newly discovered evidence and was "not credible at all;" and (4) the June 2003 forensic test report, which indicated that no blood was found in defendant's car, did not constitute newly discovered evidence of actual innocence and the notion that the police should have found Raama's blood in defendant's car two weeks after the murder was purely speculative.

¶ 45

## II. ANALYSIS

¶ 46 The Post-Conviction Hearing Act allows a defendant who is imprisoned in a penitentiary to challenge his conviction or sentence for violations of his federal or state constitutional rights. 725 ILCS 5/122-1 (West 2010); see also *People v. Whitfield*, 217 Ill. 2d 177, 183 (2005). As a matter of Illinois constitutional jurisprudence, "a claim of newly discovered evidence showing a defendant to be actually innocent of the crime for which he was convicted is cognizable as a matter of due process." *People v. Washington*, 171 Ill. 2d 475, 486 (1996).

¶ 47 Procedurally, an actual-innocence claim should be treated like any other postconviction claim, and in a postconviction hearing, the petitioning defendant bears the burden of proof to show a denial of a constitutional right by a preponderance of the evidence. *People v. Coleman*, 2013 IL 113307, ¶ 92.

“Substantively, in order to succeed on a claim of actual innocence, the defendant must present new, material, noncumulative evidence that is so conclusive it would probably change the result on retrial. New means the evidence was discovered after trial and could not have been discovered earlier through the exercise of due diligence. Material means the evidence is relevant and probative of the petitioner’s innocence. Noncumulative means the evidence adds to what the jury heard. And conclusive means the evidence, when considered along with the trial evidence, would probably lead to a different result.

\*\*\* [If any of the evidence presented at the evidentiary hearing was new, material, and noncumulative], then the trial court must consider whether that evidence places the evidence presented at trial in a different light and undercuts the court’s confidence in the factual correctness of the guilty verdict. This is a comprehensive approach and involves credibility determinations that are uniquely appropriate for trial judges to make. But the trial court should not redecide the defendant’s guilt in deciding whether to grant relief. Indeed, the sufficiency of the State’s evidence to convict beyond a reasonable doubt is not the determination that the trial court must make. If it were, the remedy would be an acquittal, not a new trial. Probability, not certainty, is the key as the trial court in effect predicts

what another jury would likely do, considering all the evidence, both new and old, together.” (Citations and internal quotation marks omitted.) *Id.* ¶ 96-97.

¶ 48 We review the trial court’s decision to deny defendant postconviction relief following the evidentiary hearing for manifest error. *Id.* ¶ 98. Manifest error is “clearly evident, plain, and indisputable.” *People v. Morgan*, 212 Ill. 2d 148, 155 (2004). “Thus, a decision is manifestly erroneous when the opposite conclusion is clearly evident.” *Coleman*, 2013 IL 1133097, ¶ 98.

¶ 49 The trial court found that the evidence was new, except for the testimony of Rush and the forensic report concerning the absence of blood in defendant’s car. The court also found that the testimony of Tijatta, Muhammad, and Rush defied belief. The court considered the testimony of Tijatta and Muhammad along with the trial evidence and concluded that it would probably not lead to a different result because it did not place the evidence presented at trial in a different light and undercut the court’s confidence in the factual correctness of the guilty verdict.

¶ 50 On appeal, defendant argues that the trial court’s decision was manifestly erroneous because the testimony of Tijatta, Muhammad, and Rush, and the forensic report constituted newly discovered, material, and noncumulative evidence that, when considered alongside the jury trial evidence, would probably change the result on retrial.

¶ 51 The State responds that the trial court’s decision was not manifestly erroneous because (1) the forensic report and testimony of Rush were not newly discovered; and (2) witnesses Tijatta and Muhammad, although newly discovered, material and noncumulative, were not credible and their testimony was not so conclusive that it would probably change the result of the trial.

¶ 52 We conclude that the testimony of Rush and the forensic report were not new because both could have been discovered earlier through the exercise of due diligence. Although Anthony's jury trial testimony was equivocal about Rush's presence at the scene, the testimony of Toni and Barbara clearly established that Rush was on the porch with Barbara and others when defendant struck Raama with the bat. Even defendant testified that Rush was on the porch talking to Barbara when Raama walked by the house. Moreover, Rush's affidavit and testimony at the evidentiary hearing established that the defense knew she was a witness before the trial because Rush refused to get involved when defendant and "several people involved in his case" contacted her and asked her to come forward and tell what she knew.

¶ 53 Furthermore, the forensic report clearly existed at the time of the trial, and defendant, who bears the burden of proof to show a denial of a constitutional right by a preponderance of the evidence (*id.* ¶ 92), has presented no evidence indicating the State somehow withheld that report from the defense. Moreover, the absence of blood in defendant's car after the murder was not indicative of his innocence because Toni testified that several minutes after the offense Terrence gave her defendant's clothes in a gym bag and she drove home to Indiana and washed those clothes. Also, defendant, who knew the police were looking for him, had possession of his car after the murder and it was not tested until a couple of weeks after the murder.

¶ 54 We also conclude that, although the testimony of Tijatta and Muhammad was new, material and noncumulative evidence, the trial court's decision that this evidence was not conclusive enough to probably change the result on retrial was not manifestly erroneous. Tijatta's and Muhammad's accounts about how they got involved in supporting defendant's postconviction petition and what they observed at the scene were inconsistent, incredible and nonsensical.

¶ 55 Tijatta and Muhammad, who were siblings and knew defendant, members of his family, and his friends, claimed that they separately and unexpectedly came upon the scene of the offense, observed a man who looked nothing like defendant beat some woman, and then never reported that attack to the police. Tijatta and Muhammad also claimed that they did not see each other at the scene or even mention the matter to each other, let alone to defendant's family and friends.

¶ 56 In their affidavits, Tijatta and Muhammad indicated that they realized shortly after Raama's murder the significance their testimony would have had to prove defendant's innocence but they did not come forward because Tijatta was afraid of Mike, and Muhammad did not know the offender and then worried about getting in trouble for waiting too long to come forward. However, in contrast, the hearing testimony of Tijatta and Muhammad indicated that they did *not* realize the significance of the fight they observed back in 2003 until several years later when they experienced separate epiphanies, which revealed they knew a different man had committed the crime for which defendant was wrongly convicted. Their testimony at the hearing lacked credibility because Tijatta saw Danielle—defendant's true girlfriend, mother of his child, and business partner—numerous times over the years, and Muhammad admitted that he knew months after witnessing the murder that defendant had been charged and ultimately convicted of the murder and had even attempted to visit defendant in prison once.

¶ 57 Tijatta's testimony also lacked credibility because it was inconsistent with certain important facts in the affidavit she signed. Her affidavit attested that she was walking down the *block* and saw a crowd of people; Mike walked up to a woman, struck her over the head with a *bat*, and *struck her several more times after she fell to the ground*; the *crowd dispersed* and

Tijatta turned around, left the block, and *was afraid Mike would kill her* if she reported the matter. In contrast, she testified that she observed the offense while she was walking alone in the *alley*; Mike argued with a woman in the street and struck her with “*something*”; and Tijatta turned around and walked away, *not thinking anything of the incident at the time or knowing whether the woman was badly hurt*. The factual discrepancies between her affidavit and testimony were not minor. The alterations appearing in her hearing testimony attempted to explain why no one else, including her own brother, saw her at the scene, and why she did not call the police at the time or realize the significance of the incident until years later. Tijatta unsuccessfully attempted to discount these major discrepancies between her affidavit and hearing testimony by explaining that Danielle had prepared the affidavit and Tijatta noticed all the discrepancies before she signed it but just went ahead and signed it anyway.

¶ 58 Muhammad’s testimony also lacked credibility. Whereas he did not see defendant’s brothers or any women at the scene, the witnesses at the jury trial, including defendant, testified that defendant’s brothers and women were present at the scene. Muhammad could not adequately explain why he even drove by the scene when he left the lounge to go to his girlfriend’s home, which was in the other direction. Also, Muhammad could not draw a map of the scene for investigators or even show where the offense occurred or his location after the investigators drew the map for him. Moreover, his testimony about when he realized he had witnessed the offense for which defendant was wrongly charged, convicted and imprisoned was so contradictory as to be nearly incomprehensible and thus almost immaterial.

¶ 59 The court is not bound to believe witnesses whose testimony “is contrary to the laws of nature, or universal human experience.” *People v. Coulson*, 13 Ill. 2d 290, 297 (1958). We

conclude that the trial court's denial of defendant's petition for postconviction relief was not manifestly erroneous because, when weighed against the State's evidence, the testimony of Tijatta and Muhammad was not conclusive enough that another trier of fact would probably reach a different result.

¶ 60

### III. CONCLUSION

¶ 61 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 62 Affirmed.