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2019 IL App (3d) 180719-U

Order filed October 15, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellant,)	
v.)	Appeal No. 3-18-0719
)	Circuit No. 98-CF-874
GREGORY SCOTT WILSON,)	
Defendant-Appellee.)	Honorable Paul Gilfillan, Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Schmidt and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not manifestly err when it granted defendant's successive postconviction petition.

¶ 2 The State appeals from an order granting defendant, Gregory Scott Wilson, postconviction relief following a third-stage evidentiary hearing. The State contends that the circuit court manifestly erred in finding that the newly discovered evidence was of such a conclusive nature that a jury would likely find that defendant acted in self-defense. We affirm.

¶ 3

I. BACKGROUND

¶ 4

A jury found defendant guilty of first degree murder, armed violence, solicitation of unlawful delivery of a controlled substance, and unlawful possession of a weapon by a felon. The charges arose from the stabbing death of Victor Williams in 1998.

¶ 5

At trial, Williams's friend, Jonathan Pickett, testified that he and Williams were hanging out on a street corner in the early morning of September 26, 1998. Williams was not armed with a weapon. Defendant drove over to Williams to purchase drugs. Williams was standing next to the driver's side door and Pickett walked over to stand next to Williams. Pickett told defendant that "if you try to pull off with that drugs, the guy across the street going to shoot your car up." Williams poured drugs into defendant's hand. Defendant then motioned as if to hand Williams money, but instead began to drive off without paying for the drugs. Williams's head was still inside the car, and he held onto the car door as it drove away. Pickett ran after the car. The car continued "zigzagging" down the street while Williams continued to hold onto the car. Pickett eventually found Williams lying in the grass. Pickett did not see what transpired inside the car while it drove off, and he did not see Williams fall from the car into the grass.

¶ 6

In defendant's testimony, he provided a different account of the events than Pickett. According to defendant, Williams poured the drugs into his hand, then Pickett told defendant "if you move, I'm going to shoot your a**." Defendant did not see a gun, but he thought they had a weapon, so he put his car into gear and drove away. Williams reached inside the car and grabbed the steering wheel and "back-handed" defendant across his face and right eye. Defendant described Williams being inside the car from "his chest up." Defendant and Williams fought over control of the steering wheel as the car was in motion. While the car careened, defendant asked Williams to get off the car and Williams replied, "You're f***ing dead." The car struck

several curbs and ultimately crashed into a tree and spun 180 degrees. Before crashing, defendant grabbed a knife from underneath his seat as Williams climbed further inside the car. Defendant did not recall using the knife, he could only remember hitting the tree. Defendant drove away and noticed blood on his hands.

¶ 7 Detective Pat Rabe interviewed defendant the next day and defendant denied involvement in Williams's death. Defendant first told Rabe that he had lent the car to someone else that night. Later in the interview, defendant changed his story and acknowledged having driven to purchase cocaine with a companion. Defendant told Rabe that Williams placed the cocaine in defendant's hand, and defendant decided that if he could get the entire bag of cocaine he would drive off without paying. Defendant stated that Pickett approached the car and told defendant to shut off his car. Defendant became alarmed and drove away. Williams continued to hold onto the door post and steering wheel after defendant drove off. Defendant picked up a knife, stabbed Williams and drove away. In a third interview, defendant changed his story again. In the third account, defendant stated that he was alone and that he had swung the knife at Williams.

¶ 8 The above interviews were not recorded, but defendant ultimately agreed to give a videotaped statement. In the statement, defendant acknowledged that he traveled to purchase cocaine and was approached by Williams. Defendant changed his story about the purchase, stating that he intended to pay for the drugs because he had money. Defendant added that a second man threatened to shoot him if he tried to leave. According to defendant, both men lunged at the car, at which point defendant attempted to escape by driving away. Williams jumped into the car. Defendant stated that Williams reached inside the car and struck him on the side of his head and told defendant to stop the car. As he kept driving, Williams grabbed the

wheel. Defendant tried to dislodge Williams from the steering wheel, but Williams leaned further into the car. Defendant threw money at Williams who responded by telling defendant he was dead if he stopped. Defendant claimed he pulled out his knife in self-defense. As he raised the knife, the car hit a bump and the ensuing force caused the knife to strike Williams. Williams dropped off the car and defendant drove away.

¶ 9 The jury was instructed on second degree murder and self-defense, but the jury found defendant guilty of first degree murder. The court sentenced defendant to concurrent terms of 38 years' imprisonment for first degree murder and 15 years' imprisonment for armed violence. On appeal, this court affirmed, but remanded for resentencing on the armed violence conviction. *People v. Wilson*, No. 3-99-0367 (2001) (unpublished order under Illinois Supreme court Rule 23). On remand, defendant was resentenced to 10 years' imprisonment for armed violence.

¶ 10 Next, defendant filed a postconviction petition. The petition alleged that trial counsel provided ineffective assistance. In relevant part, the petition alleged that counsel failed to investigate Helen Sanders, an eyewitness. At the third-stage hearing, Sanders testified that on the night in question, she observed a car swerving with a man hanging out from the car from the waist down. Her testimony contradicted Pickett's testimony in that he stated that Williams was hanging from the car door. Her testimony also supported defendant's testimony that Williams was partially inside the car. The circuit court denied the petition finding that counsel should have presented Sanders as a witness, but counsel's failure to do so did not prejudice defendant. On appeal, this court affirmed. *People v. Wilson*, No. 3-04-0497 (2006) (unpublished order under Illinois Supreme Court Rule 23).

¶ 11 Subsequently, defendant filed a motion for leave to file a successive postconviction petition, which is the subject of this appeal. The motion was based on newly discovered

eyewitness testimony. Attached to the motion is the affidavit of Gene Johnson. Although defendant later abandoned his argument based on Johnson's affidavit, the court allowed leave to file the petition.

¶ 12 Counsel was appointed, and did not amend the petition. However, defendant filed a supplement which added the affidavits of Raymond King and Raymond Paul. King's affidavit attested that in June 1994, he heard someone knock on his back door. King saw that it was Williams and Pickett. One of the two was hiding on the side of the house. King did not answer the door because he knew the pair to be "stick-up" men, robbing anyone that they came into contact with. King also stated that Williams and Pickett were also known for being violent.

¶ 13 Also attached to the petition is the affidavit of Paul. Paul's affidavit attested that in 1993 he was the victim of a robbery committed by Williams.

¶ 14 The successive petition also alleged that defendant hired a private investigator that discovered Williams's criminal history included convictions for robbery and criminal trespass to a motor vehicle.

¶ 15 The State moved to dismiss the petition. The court granted the State's motion to dismiss finding that defendant did not specify the basis for his newly discovered evidence, but noted that defendant could file another motion for leave to file a successive postconviction petition to address the defect.

¶ 16 Defendant did not appeal, but a week after the court dismissed defendant's successive postconviction petition, he filed a new motion for leave to file a successive postconviction petition. Although the motion did not include an attached proposed petition, the court granted leave to file the petition. Defendant proceeded *pro se* on the petition. Defendant then filed his new successive postconviction petition which realleged his claim of actual innocence from his

first successive postconviction petition. The petition argued that King's affidavit was newly discovered because it could not have been discovered prior to trial.

¶ 17 Defendant then supplemented his successive petition with the affidavit of Edward Jackson, a fellow inmate at Stateville Correctional Center. Jackson attested that in 1999 he overheard Pickett telling people how he and Williams robbed someone. Pickett explained how Williams jumped into the car. Pickett would have shot defendant but Williams was in the way.

¶ 18 The State moved to dismiss the petition. The court granted the State's motion, finding that defendant had failed to make a substantial showing of actual innocence. The court found that the criminal history of Williams and Paul's affidavit were not newly discovered evidence because they could have been discovered through due diligence. Sanders's affidavit was not newly discovered because the affidavit was submitted with defendant's first postconviction petition. However, the court did find King's affidavit to be newly discovered, but found it would not have changed the result on retrial because there was no argument as to who was the aggressor. The court found that defendant failed to establish a claim of self-defense because he did not say that he stabbed Williams to protect himself or because he was afraid, but rather, claimed to have accidentally stabbed Williams.

¶ 19 On appeal, this court reversed and remanded for a third-stage hearing. *People v. Wilson*, 2017 IL App (3d) 140606-U. This court agreed with the circuit court's finding that King's affidavit was newly discovered evidence. However, we rejected the circuit court's conclusion that King's affidavit had little evidentiary value. This court found that King's affidavit would support defendant's claim of self-defense. King's affidavit, considered in light of "all the evidence, old and new," would support a claim of actual innocence. *Id.* ¶ 18. Therefore, this court remanded "for an evidentiary hearing on the defendant's claim of actual innocence." *Id.*

¶ 20 On remand, defendant filed a new supplemental successive postconviction petition. The supplemental petition contained the same claim as his prior successive postconviction petition, but added the affidavit of Kevin Jones. The State did not file a response to the petition, and the cause proceeded to a third-stage hearing.

¶ 21 At the third-stage hearing, the State and defense counsel agreed to present the evidence of King, Jones, Jackson, Paul, and Sanders. In other words, the State did not object to the testimony of any of the witnesses.

¶ 22 Jones testified that he had known defendant since 1992. Defendant would purchase drugs from Jones. Jones and defendant met again in prison in 2015. Jones also knew Williams and Pickett “well” from growing up together. Jones used to sell drugs and fake drugs with Williams and Pickett. Jones also used to rob people with Williams and Pickett. Pickett would act as a lookout and was usually armed with a knife or firearm. Williams would usually carry a knife during the robberies. Pickett told Jones that Williams was killed trying to rob someone. The conversation occurred between 1998 and 2000. Jones also testified that Pickett had been killed during a drug deal.

¶ 23 Jackson testified that he was currently incarcerated for first degree murder. Jackson did not know Williams. He did not know Pickett personally, but did know Pickett’s reputation in the neighborhood as a dangerous person. Jackson observed Pickett carry a firearm several times. Jackson had known of Pickett for three to four years, and never saw Pickett sell drugs or rob anyone. In 1999, while playing a basketball game, Pickett was talking to other people and told them how Pickett and “some other guy” robbed a “white guy.” Pickett stated that the other guy jumped inside the driver’s side window as the car drove off. Pickett did not get any money as the target “took off” and said nothing about the other guy being killed. Jackson also testified that

Pickett bragged about ripping people off, but he never said anything about using a gun or hurting anyone. Jackson did not know defendant, but made the connection between defendant and Pickett in overhearing defendant speak about his case. His conversation with defendant occurred in 2005 or 2006.

¶ 24 Paul testified that he knew Williams from attending the same grade school. In 1993, Paul attended the same party as Williams. Paul drank at the party and at some point Williams asked to borrow money. Paul handed Williams money and Williams saw that Paul had a large amount of cash. Later in the evening, Williams approached Paul from behind and pulled Paul's shirt over his head and began choking him. Williams stole the cash from Paul. Paul ran away and notified the police. Paul knew Williams as a violent person because Williams was always fighting and going to jail. After the robbery, Paul moved to a different state because he was afraid Williams would do something similar again.

¶ 25 King testified that he was currently incarcerated in the Illinois Department of Corrections. King knew Williams from living in the same neighborhood. King knew Williams to smoke crack cocaine. He also knew Williams was involved with a gang. King also knew Pickett who used drugs too. King knew Williams sold fake drugs in his neighborhood because people had complained. In 1994, Williams and Pickett came to King's house and knocked on the back door. King did not open the door, and asked what they wanted. Williams asked King if he had any drugs to sell, and King said that he did not sell drugs from his house. King stated that Williams and Pickett were known to be armed, so King told his nephew to go outside to the other side of the house and cut Williams and Pickett off. When his nephew stepped outside, either Pickett or Williams pulled out a gun. King came outside and pulled out his gun. King fired a shot but did not know if he hit anyone. Williams and Pickett ran away.

¶ 26 King also testified that he “knew that [Williams and Pickett were] stick-up boys *** because they had been robbing a lot of little weed spots around the neighborhoods.” According to King, he and his fellow gang members forced Williams and Pickett to leave the neighborhood because the fake drugs they were selling were bad for King’s drug dealing business.

¶ 27 Sanders could not be located to testify at the third-stage hearing. Instead, the court accepted the transcripts of Sanders’s testimony at defendant’s first postconviction hearing. As noted above, Sanders testified as an eyewitness, seeing Williams hanging half inside defendant’s car.

¶ 28 After taking the matter under advisement, the circuit court entered a written order granting defendant postconviction relief. The court considered the transcripts of Sanders’s prior testimony and Williams’s criminal history. The court also considered the testimony of King, Paul, Jones, and Jackson. The court found their testimony credible. The court found that the evidence supported defendant’s theory of self-defense, vacated defendant’s convictions, and set the matter for a new trial.

¶ 29 **II. ANALYSIS**

¶ 30 On appeal, the State contends that the circuit court erred in granting defendant’s successive postconviction petition. Defendant’s petition was granted following a third-stage hearing. “When a petition is advanced to a third-stage, evidentiary hearing, where fact-finding and credibility determinations are involved, we will not reverse a circuit court’s decision unless it is manifestly erroneous.” *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). “Manifest error is defined as error which is clearly evident, plain, and indisputable.” (Internal quotation marks omitted.) *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009) (quoting *People v. Morgan*, 212 Ill. 2d 148, 155 (2004), quoting *People v. Johnson*, 206 Ill. 2d 348, 360 (2002)). “Thus, a decision is

manifestly erroneous when the opposite conclusion is clearly evident.” *People v. Coleman*, 2013 IL 113307, ¶ 98. Because the evidence presented at the third-stage hearing supports defendant’s trial testimony that he acted in self-defense, we find the court did not manifestly err.

¶ 31 Defendant’s successive postconviction petition claimed actual innocence based on newly discovered evidence. He asserted that the newly discovered evidence established that he acted in self-defense. To assert a claim of actual innocence based on newly discovered evidence, a defendant must show that the evidence was (1) newly discovered, (2) material and not merely cumulative, and (3) of such a conclusive character that it would probably change the result on retrial. *Ortiz*, 235 Ill. 2d at 333; *People v. Orange*, 195 Ill. 2d 437, 450-51 (2001) (citing *People v. Molstad*, 101 Ill. 2d 128, 134 (1984)). In the context of a third-stage hearing, the question is not whether the State’s evidence is sufficient to convict beyond a reasonable doubt, but whether it is probable that a jury “considering all the evidence, both new and old together,” would still convict. *Coleman*, 2013 IL 113307, ¶ 97.

¶ 32 At the outset, the State challenges the scope of the third-stage hearing. The State contends that this court’s prior order limited the scope of the third-stage hearing to only the testimony of King. Consequently, the State contends that the court erred when it considered the additional evidence presented by the defense. We reject the State’s argument for three reasons. First, the State misconstrues this court’s prior order. This court did not remand for the sole purpose of presenting King’s testimony. Rather, this court remanded for a third-stage hearing of defendant’s claim of actual innocence. *Williams*, 2017 IL App (3d) 140606-U, ¶ 18. Thus, the prior order did not set a limitation on the evidence to be heard. Second, the State forfeited this argument by failing to object to the presentation of additional witnesses. See *People v. Adams*, 131 Ill. 2d 387, 396 (1989). Third, the State affirmatively waived this argument by inviting the purported error.

See *People v. Harding*, 2012 IL App (2d) 101011, ¶ 17. The State cannot specifically agree to allow the defense to present all its witnesses then later argue on appeal that the court erred by considering the witnesses' testimony.

¶ 33 Returning to the State's argument, it contends that the circuit court manifestly erred in finding that the newly discovered evidence satisfied the third element of an actual innocence claim. Specifically, the State contends that the evidence presented is not of such a conclusive character that it would probably change the result on retrial. Stated another way, the State argues that it is not likely that the jury would have found that defendant acted in self-defense.

¶ 34 To raise a claim of self-defense, a defendant must show the following to support the use of force: (1) that force was threatened against defendant; (2) that defendant was not the aggressor; (3) that the danger of harm was imminent; (4) that the threatened force was unlawful; (5) that defendant believed a danger existed, the use of force was necessary to avert the danger, and the kind and amount of force was necessary; and (6) that defendant's beliefs were reasonable. *People v. Morgan*, 187 Ill. 2d 500, 533 (1999). When self-defense is properly raised, evidence of the victim's aggressive and violent character may be admissible. See *People v. Lynch*, 104 Ill. 2d 194, 203 (1984).

¶ 35 In this case, defendant argued both accident and self-defense at trial. The jury was instructed on self-defense. There was a dispute between defendant's and Pickett's accounts of the event as to which party was the aggressor. Defendant claimed he was being robbed, that a struggle occurred between he and Williams, and that defendant feared for his life. Pickett, by contrast, testified that defendant was trying to steal drugs. Evidence of Williams's aggressive and violent character is therefore relevant to show which party acted as the aggressor.

¶ 36 At the third-stage hearing, the testimony of King and Jones established that Williams had an aggressive and violent character. King testified to a violent encounter that he had with Williams and Pickett. According to King, Pickett and Williams approached his home in an attempt to purchase drugs. King stated that Pickett and Williams were known to be armed and believed that they were trying to rob him. King's nephew exited the house to confront the two. This caused either Pickett or Williams to brandish a gun. Similarly, Jones's testimony is also relevant in that he personally robbed individuals with Williams and Pickett. Jones specifically testified that the three would rob individuals during drug transactions and that Williams and Pickett were usually armed with a gun or a knife. Robbery in itself is an aggressive crime. Therefore, Jones's and King's testimony tends to show that Williams had a propensity for violence

¶ 37 We find the trial court did not manifestly err when it concluded that this newly discovered evidence is so conclusive that upon retrial a jury would likely find that defendant acted in self-defense. Nothing in the record shows that the opposite conclusion is clearly evident. King's and Jones's testimony tends to corroborate defendant's account of the event that Williams acted as the aggressor. Defendant testified that he became fearful during the drug transaction after being threatened with robbery. Williams's violent behavior therefore supports defendant's testimony that he was being robbed at the time he attempted to flee. The ongoing robbery escalated while Williams hung from inside the car hitting defendant and telling defendant that he was "f***ing dead." It is likely a jury would find it reasonable for defendant to defend himself if he believed that stopping the car would allow Williams to act violently against him. Putting the evidence at trial into context with this newly discovered evidence, we cannot say that the court

manifestly erred when it found that had the jury heard this evidence at trial it is likely that it would have found that defendant acted in self-defense.

¶ 38 Moreover, the other evidence presented at the third-stage hearing also supports the court's conclusion. Sanders provided an eyewitness account that supported defendant's testimony that a struggle occurred while Williams was hanging from defendant's car. Sanders's testimony also contradicts Pickett's testimony that Williams was merely hanging from the car door. Additionally, Williams's criminal history included a conviction for robbery, which also shows Williams's aggressive behavior. Paul testified to the robbery and described how Williams violently attacked him and stole his money.

¶ 39 III. CONCLUSION

¶ 40 The judgment of the circuit court of Peoria County is affirmed.

¶ 41 Affirmed.