2025 IL App (4th) 240836-U

NO. 4-24-0836

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September 11, 2025
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. HAMMET D. BROWN, Defendant-Appellant.	) Appeal from the) Circuit Court of) McLean County) No. 18CF652)) Honorable) John Casey Costigan,) Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Lannerd and Vancil concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's order denying defendant leave to file a successive postconviction petition because defendant did not allege a colorable claim of actual innocence.

¶ 2 In February 2021, following a bench trial, the trial court found defendant, Hammet D. Brown, guilty of six counts of first degree murder (720 ILCS 5/9-1(a)(1) (West 2018)) and two counts of attempted murder (*id.* § 8-4, 9-1). Later, the court sentenced defendant to (1) natural life in prison for each of the murders and (2) 31 years in prison for each of the attempted murders, with all the sentences to run concurrently.

¶ 3 In March 2024, defendant filed a motion for leave to file a successive postconviction petition, alleging actual innocence based upon newly discovered evidence in the form of a written statement from Sydney Mays. In May 2024, the trial court denied defendant's motion.

¶ 4 Defendant appeals, arguing that the trial court erred by denying him leave to file a successive postconviction petition because he set forth a colorable claim of actual innocence. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 Because we have fully discussed the trial evidence in our prior orders on appeal, we recite the facts only to the extent they are relevant to our determination of the current appeal. See *People v. Brown*, 2022 IL App (4th) 210504-U (affirming defendant's conviction on direct appeal); *People v. Brown*, 2025 IL App (4th) 231515-U (reversing the summary dismissal of defendant's initial postconviction petition).

¶ 7 A. The Bench Trial

¶ 8 Following a February 2021 bench trial, defendant was found guilty of (1) the first degree murders of both Steven Alexander and Teneshia Brown and (2) the attempted murders of both Kenleia Sims and Tyree Jones.

¶ 9 At trial, the State presented evidence of a shooting that occurred on June 10, 2018, at around 1 a.m., at an outdoor barbecue at the Orchard Road apartments in Bloomington, Illinois, which was attended by 30 to 50 people. Alexander and Brown were shot and killed, while Jones and Sims were shot and injured.

¶ 10 Nathaniel Caldwell testified that the barbecue was a birthday party he threw for his son. Around 9 or 10 p.m., a younger crowd started showing up. Caldwell saw Alexander, whom he knew as a friend of his son's, and gave him a hug. Caldwell did not see a firearm. About five minutes later, he heard gunshots. He identified defendant, whom he also knew, as the only person firing a gun. He saw Alexander run away from defendant, then collapse. Caldwell did not hear any arguing before he heard the shots.

¶ 11 Jones testified that he arrived at the party with Alexander and Brown around midnight. He was chatting with Alexander, Brown, and Sims when someone started shooting at them. He could not identify the shooter, and he had no idea why someone was shooting at them. Jones was shot in the knee.

¶ 12 Sims testified that she arrived at the party a little after midnight. She saw Alexander, Jones, and Brown and gave them each a hug. She did not see any weapons on them. When the four of them were standing in a group talking, defendant, whom she knew, walked through their group without saying anything. Defendant went through the "cut," meaning the area between two of the apartment buildings, then returned a minute or two later and began shooting at Alexander. Sims testified that neither Alexander nor Jones pulled out a gun or shot back. She started running and saw Brown fall. Sims was shot in the leg. Sims said the incident was a complete shock, and she had no idea why defendant began shooting at Alexander.

¶ 13 Nichole Tinker testified that she lived at the Orchard Road apartments and was in her bedroom when she heard four gunshots, followed by a pause, then four more gunshots. She heard someone yell, "Get the gun, get the gun."

¶ 14 Several police officers testified regarding their investigation into the shooting. Officer Tyler Elston, who was nearby on another call with Officer Ryan Strebing at the time of the shooting, testified that he heard a total of eight shots, which he described as five shots, followed by a short pause, then three more shots. Strebing testified that he arrived within "a couple of minutes." He found Brown on the ground unresponsive and did not see any weapon on or near her. Elston found Alexander on his stomach, not moving. He rolled Alexander over and began rendering aid. Elston did not see any weapons on or around Alexander.

¶ 15 Several officers searched the area and found eight fired cartridge cases, a fired

bullet, and a fired bullet jacket fragment from a .40-caliber weapon. They searched the area and surrounding properties for additional evidence, including evidence of another person shooting, but found none. A forensic scientist with the Illinois State Police crime laboratory testified that all eight cartridge cases and the fired bullets came from the same .40-caliber Hi-Point firearm.

¶ 16 Defendant testified that he shot Alexander but did so in self-defense. Defendant stated he had three prior encounters with Alexander before the shooting. The first encounter occurred in late April or early May 2018 at a convenience store, where defendant was trying to sell cannabis. Alexander and his friends angrily confronted him. Defendant felt afraid and was not carrying a gun, so he got into his car and drove away.

¶ 17 The second encounter occurred in mid-May 2018. Defendant was driving home to the Orchard Road apartments after selling cannabis when a car with Alexander in the passenger seat began following him closely. When defendant got to his apartment, the car drove by and a passenger "pump faked" him, which defendant described as motioning as if one has a gun when he or she does not actually have a gun. Defendant said this incident also concerned him. (We note that defendant's friend, Duane Martin, testified that defendant told Martin that defendant displayed a gun when the car drove by; defendant denied telling Martin this. Martin also testified that defendant told him, "I was so thirsty," which Martin took as defendant saying he wanted to shoot them.)

¶ 18 The third encounter occurred on May 25, 2018. Defendant was at a bonfire when Alexander and six or seven individuals arrived in two cars. Defendant approached the newcomers and they all scattered, running in different directions. Defendant was scared, so he left in his car. As he was driving away, he saw Alexander fire four or five shots at him from where he was standing under a tree. Defendant was stopped by a police officer for speeding while driving away

and told the police officer he had just been shot at, but he did not tell the police who shot at him because he did not trust the police. (Officers Shane Bachman, Matthew Kirkham, and Lucas Gibbs testified that they investigated the incident and found no evidence of a shooting.)

¶ 19 Defendant then testified about the night of the shooting. He arrived at the party early to help set up tables. (We note that Caldwell, who hosted the party, had testified that he knew defendant but was not close with him.) Defendant said he was armed with a .40-caliber Hi-Point handgun. He testified that he was not intoxicated, although on cross-examination, he stated he consumed alcohol and cannabis.

¶ 20 Defendant testified that he was walking to get lemonade when Alexander and Jones approached him; he did not know Brown or Sims. Alexander said, "I finally got you," pulled a gun from his waistband, and began shooting. Believing his life to be in danger, defendant pulled his gun and fired four shots at Alexander while backing away. He then heard three shots coming his way, although he did not know who was firing at him, so he "return[ed] fire," shooting at least four more shots. He ran to a nearby apartment, then fled to Indiana, then Chicago, Illinois, where he was ultimately arrested on June 26, 2018.

¶ 21 While being transported back to Bloomington, defendant was given a copy of a search warrant that listed the names of Alexander, Jones, Brown, and Sims. Defendant read the warrant and said the only person he knew was Brown. He testified that he lied about knowing Alexander and Jones because he was "scared to tell the truth."

¶ 22 B. The Trial Court's Ruling and Sentence

¶ 23 The trial court took the matter under advisement, and on February 22, 2021, it issued an oral ruling. The court noted that "the only issue was whether the defendant was acting in self-defense," which requires "an immediate threat." After detailing the evidence, the court

rejected defendant's claim that he shot Alexander in self-defense and instead found him guilty of all counts of first degree murder and attempted murder. The court also found that defendant's testimony contained "inconsistency after inconsistency," which led the court to "seriously question his credibility." In contrast, the court found that Sims and Caldwell testified credibly and their testimony was supported by the physical evidence.

¶ 24 The trial court also found that the physical evidence did *not* support defendant's testimony. Specifically, although defendant testified that Alexander fired at him, Tinker testified that she heard only eight gunshots and police recovered only eight cartridge cases, all fired from defendant's gun. (We note that Officer Elston, like Tinker, also testified that he heard only eight shots.)

¶ 25 The trial court also referred to several pieces of evidence that it found to be inconsistent with self-defense. In particular, the court pointed to convenience store surveillance video showing defendant 30 minutes after the shooting approach the manager—with whom defendant often visited and "joke[d] around"—and place his arm around him in greeting in a manner markedly different from his "nervous" behavior during the traffic stop when he told the police he had just been shot at. The court also pointed out that defendant claimed he was scared to tell the police the truth while being transported but, during the traffic stop, the first thing he told the police was that he had been shot at.

¶ 26 Last, the trial court emphasized some of defendant's statements from a court-authorized overhear with Martin after the shooting, which were inconsistent with self-defense. During that phone call, defendant said (1) he was "down to five bumpers," meaning guns, after throwing his .40-caliber handgun in the river following the shooting, (2) he "upped one on them," which he testified meant to pull a gun, (3) "they thought it was going to be candy-ass," (4) "they

finally came to our doorstep," and (5) "I kept telling them, folks, if something happens to me it ain't going to be nice."

¶ 27 In August 2021, the trial court sentenced defendant to two terms of natural life in prison for the first degree murders of Alexander and Brown and two terms of 31 years in prison for the attempted murders of Jones and Sims, with all the sentences to run consecutively. (We note that, although defendant was found guilty of six counts of first degree murder, four of those counts merged at sentencing.)

¶ 28 B. The Direct Appeal

¶ 29 In November 2021, defendant appealed, arguing that the trial court erred by (1) basing its findings on the mistaken belief that defendant had a duty to retreat prior to acting in self-defense and (2) declining to appoint new counsel to investigate defendant's posttrial claims of ineffective assistance at a September 2021 *Krankel* hearing (see *People v. Krankel*, 102 Ill. 2d 181 (1984)). This court affirmed. *Brown*, 2022 IL App (4th) 210504-U, ¶ 1.

¶ 30 C. The Initial Postconviction Petition

¶ 31 In June 2023, defendant filed an initial postconviction petition, alleging that his trial counsel rendered ineffective assistance by causing defendant to waive his right to a jury trial. Defendant alleged that counsel told him a bench trial would be better because the trial judge owed counsel a favor. The trial court summarily dismissed defendant's petition as frivolous and patently without merit.

¶ 32 In March 2025, this court reversed the trial court's judgment and remanded for second-stage proceedings because defendant had sufficiently stated the gist of a constitutional claim. *Brown*, 2025 IL App (4th) 231515-U, ¶ 1.

¶ 33 D. The Successive Postconviction Petition

¶ 34 In March 2024, while defendant's appeal of his initial postconviction petition was pending, defendant *pro se* filed a motion for leave to file a successive postconviction petition, which is the subject of this appeal. The petition alleged a claim of actual innocence based on the written statement of Sydney Mays. (Defendant notes in his brief that Mays's statement was "styled as an affidavit but not notarized.") Defendant asserted Mays's statement was "newly discovered evidence [that] reveal[ed] that Alexander possessed a gun during the shooting and that [defendant] acted in self-defense."

¶ 35 Mays's written statement was attached to the proposed successive petition and stated as follows:

> "On June 9, 2018, I was attending a barbecue/Birthday Party on Orchard [Road] in Bloomington, IL. It was about 50 or 60 people in attendance. The party went on until the next day. At around 12:30 AM on June 10, 2018, Steven Alexander arrived at the party with a group of his friends. When Steven seen me he approached me to greet me but his eyes were scanning the crowd as if he was looking for someone. When he made it to me he said, 'what's up,' then Steven lifted his shirt to show me he was carrying a pistol. I asked Steven why he had a pistol on him and he stated 'I'm about to kill that bitch ass nigga Law.' Law is also known as [defendant]. After Steven told me what his plans were I went over to the guys I came to the party with and told them that we should leave because the energy of the party was going sour and that I didn't want to stick around. So we left the party. At around 1:00 AM I receive[d] a call from on [*sic*] of my lady friends named 'Zizi' and she was yelling frantic[al]ly saying 'He dead! Lil' Steve is dead!' I told 'Zizi' to calm down and asked her how she knew Steve was dead and she stated 'because

> I'm looking at him.' At that point I told her to hang up [and] call the ambulance. That was the last thing I heard of the incident until mid afternoon on June 10, 2018. Me and a bunch of friends met [at] Steven's mother['s] house where we were pretty much recouperating [*sic*] from the loss of Steven and that's when I was approached by one of Steven's friends. He was crying and carrying a bottle of liquor. I spoke with him for a few seconds to express my condolences and that's when he told me that all he had to remember Steve was his gun. I asked him what he meant and he went on to explain that when Steve got shot that Steve had his gun in his hand and that he took the gun off of Steve's dead body. Then Steve's friend proceeded to show me the gun and to my surprise it was the same pistol Steve showed me the night before. I've known Steve since 2012 from being around the street that I hang out on from time to time. I know Hammet Brown from hanging out on Orchard [Road] and selling weed. I did not come forward prior to Hammet's trial because I didn't want to be involved. During Hammet's trial I was dealing with my own life altering legal issues so that kept me from coming forth then. I'm coming forth now because it's the right thing to do."

¶ 36 In May 2024, the trial court entered a written order denying defendant leave to file his successive petition on the basis that Mays's statement was cumulative and not conclusive. Specifically, the court found that Mays's statement "merely adds the same information from a new source, *i.e.* that Steven Alexander had a gun on the night of the party," which "[was] exactly [what defendant] testified to at the time of trial." The court also noted that "Mays did not witness the shooting," having left the party once Alexander arrived.

¶ 37 This appeal followed.

¶ 38 II. ANALYSIS

¶ 39 Defendant appeals, arguing that the trial court erred by denying him leave to file a successive postconviction petition because he set forth a colorable claim of actual innocence. We disagree and affirm.

¶ 40 A. The Applicable Law

¶ 41 In *People v. Robinson*, 2020 IL 123849, ¶¶ 42-48, the Illinois Supreme Court set forth the law applicable to successive postconviction petitions that claim actual innocence as follows:

> "The [Post-Conviction Hearing] Act [(Act) 725 ILCS 5/122-1 *et seq.* (West 2014)] provides a statutory remedy to criminal defendants who assert claims for substantial violations of their constitutional rights at trial. [Citation.] The Act is not a substitute for an appeal but offers a mechanism for a criminal defendant to assert a collateral attack on a final judgment. [Citation.] Therefore, where a petitioner has previously challenged a judgment of conviction on appeal, the judgment of the reviewing court will serve to bar postconviction review of all issues actually decided by the reviewing court as well as any other claims that could have been presented to the reviewing court. [Citation.] As a consequence, only one postconviction petition is contemplated under the Act. [Citation.] However, the bar against successive proceedings will be relaxed on two grounds. [Citation.] The first is whether the petitioner can establish cause and prejudice for the failure to assert a postconviction claim in an earlier proceeding. [Citations.] The second is where the petitioner asserts a fundamental miscarriage of justice based on actual innocence. [Citation.]

Prior to commencing a successive postconviction petition, a petitioner must obtain leave of court. [Citation.] A request to file a successive petition based on actual innocence is reviewed under a higher standard than that applicable to the first stage for an initial petition, which only requires that the petition is not frivolous or patently without merit. [Citations.] ***

A request for leave to file a successive petition should be denied only where it is clear from a review of the petition and supporting documentation that, as a matter of law, the petition cannot set forth a colorable claim of actual innocence. [Citation.] Accordingly, leave of court should be granted where the petitioner's supporting documentation raises the probability that it is more likely than not that no reasonable juror would have convicted the petitioner in light of the new evidence. [Citation.]

At the pleading stage of postconviction proceedings, all well-pleaded allegations in the petition and supporting affidavits that are not positively rebutted by the trial record are to be taken as true. [Citations.] In deciding the legal sufficiency of a postconviction petition, the court is precluded from making factual and credibility determinations. [Citations.]

***

To establish a claim of actual innocence, the supporting evidence must be (1) newly discovered, (2) material and not cumulative, and (3) of such conclusive character that it would probably change the result on retrial. [Citations.] Newly discovered evidence is evidence that was discovered after trial and that the petitioner could not have discovered earlier through the exercise of due diligence.

[Citation.] Evidence is material if it is relevant and probative to the petitioner's innocence. [Citation.] Noncumulative evidence adds to the information that the fact finder heard at trial. [Citation.] Lastly, the conclusive character element refers to evidence that, when considered along with the trial evidence, would probably lead to a different result. [Citation.] The conclusive character of the new evidence is the most important element of an actual innocence claim. [Citation.]

Ultimately, the question is whether the evidence supporting the postconviction petition places the trial evidence in a different light and undermines the court's confidence in the judgment of guilt. [Citation.] The new evidence need not be entirely dispositive to be likely to alter the result on retrial. [Citation.] Probability, rather than certainty, is the key in considering whether the fact finder would reach a different result after considering the prior evidence along with the new evidence."

¶ 42 The supreme court recently reaffirmed the above principles in *People v. Harris*, 2024 IL 129753, ¶¶ 42-48.

¶ 43 We review *de novo* the denial of leave to file a successive postconviction petition alleging actual innocence. *Id.* ¶ 44.

¶ 44 B. This Case

¶ 45 Defendant argues that he sufficiently stated a claim of actual innocence because Mays's written statement was (1) newly discovered, (2) material, (3) noncumulative, and (4) conclusive. We disagree and conclude that the evidence supporting defendant's proposed successive petition was not conclusive. Accordingly, defendant's argument fails on that basis, and we need not address whether the evidence was also newly discovered, material, and

noncumulative. *People v. Sanders*, 2016 IL 118123, ¶ 47.

¶ 46 1. *The Form of Mays's Written Statement*

¶ 47 As an initial matter, we note that the parties devote a significant portion of their briefs to addressing whether the lack of notarization on Mays's written statement was fatal to defendant's motion for leave to file a successive postconviction petition. Although the supreme court has held that "the [trial] court may not dismiss at the first stage solely for failure to notarize a statement styled as an evidentiary affidavit" (*People v. Allen*, 2015 IL 113135, ¶ 34), the State points out that the holding in *Allen* regarded the pleading requirements for an initial postconviction petition and the issue remains unsettled regarding the pleading requirements for motions for leave to file a successive postconviction petition. The State argues that this holding should not be extended to these motions, noting they are subject to a higher pleading standard than an initial petition (see *Robinson*, 2020 IL 123849, ¶ 43 ("A request to file a successive petition based on actual innocence is reviewed under a higher standard than that applicable to the first stage for an initial petition.")). However, we need not decide this particular issue because, as we discuss, Mays's statement—even if construed as an acceptable supporting document for a successive petition—is not conclusive.

¶ 48 2. *The Conclusive Character of Mays's Written Statement*

¶ 49 Defendant argues that Mays's written statement "is of such a conclusive character it would probably change the result on retrial" because it (1) "adds credence to [defendant's] claim that Alexander was not only armed but had pulled his weapon" and (2) "explains, or sheds new light on, the absence of another weapon." In support of this argument, defendant relies primarily on *People v. Willingham*, 2020 IL App (1st) 162250, ¶ 37, which involved an appeal from a second-stage dismissal of an actual-innocence claim based upon the affidavit of a newly

discovered eyewitness.

¶ 50 In *Willingham*, the defendant—who was convicted of first degree murder and attempted murder—testified at trial that he was in rival gang territory near a crowd engaged in a fistfight when four or five rival gang members approached him. *Id.* ¶ 7. One of the gang members, Jermaine Fleming, who the defendant believed carried a gun and had previously shot at him, approached the defendant and displayed a handgun in his waistband. *Id.* The defendant then heard gunshots and, although he did not see a gun in Fleming's hand, believed the gunshots came from either Fleming or one of the men standing behind him. *Id.* The defendant attempted to fire at Fleming, but his gun failed to discharge. Hearing additional shots, the defendant fled the scene. *Id.* He later learned that Shiquita Fleming and Maurice Scott had been shot, and that Shiquita died as a result. *Id.* ¶¶ 9, 11.

¶ 51 The State's witnesses "uniformly testified" that the defendant arrived, gave guns to two of his associates, and the three of them began firing unprovoked into the crowd, which was already dispersing from the fistfight. *Id.* ¶ 10. They all testified that no one else was armed with guns that day. *Id.* The defendant was convicted and subsequently filed his postconviction petition, alleging an actual-innocence claim premised on the affidavit of Jacobi Adams. *Id.* ¶ 15. Adams stated in his affidavit that he saw Fleming shoot at the defendant before the defendant fired back. *Id.* ¶ 25. The appellate court reversed the trial court's order dismissing the defendant's petition because Adams's affidavit was new evidence that the defendant was "not the initial aggressor." *Id.* ¶ 36.

¶ 52 Unfortunately for defendant in this case, Adams's affidavit in *Willingham* differs from Mays's affidavit in one very important aspect: Adams saw the shooting incident at issue, while Mays did not.

¶ 53 We recently discussed the importance of this distinction in *People v. Leach*, 2025 IL App (4th) 231586-U, a case that (1) bears closer factual similarity to the case at hand than *Willingham* and (2) informs our analysis and conclusion that Mays's written statement is not conclusive.

¶ 54 In *Leach*, this court affirmed the trial court's order denying the defendant's motion for leave to file a successive postconviction petition alleging actual innocence based on an affidavit from Anna Martin Jones. *Id.* ¶¶ 1-2. The defendant—who was convicted of first degree murder—had testified at trial that he was walking to visit a friend when he encountered the victim, Blaylock, with whom the defendant had prior confrontations. *Id.* ¶ 13. The defendant testified that he (1) pulled his gun only after seeing Blaylock reach under his shirt and (2) fired at Blaylock only after seeing the butt of a gun in Blaylock's waistband. *Id.*

¶ 55 The jury rejected the defendant's self-defense claim, instead opting to believe the State's witnesses, who all testified that Blaylock (1) was unarmed, (2) told the defendant he did not want to argue, (3) raised his hands when the defendant pulled out his gun, and (4) turned and was running away when the defendant shot him. *Id.*

¶ 56 The defendant subsequently filed his postconviction petition, supported by an affidavit from Jones stating that before the shooting, she saw Blaylock with a gun and overheard him call a friend to arrange a meeting with the defendant under the guise of buying "weed" but instead saying he was going to "get down" on the defendant, which she took to mean "rob or kill" him. *Id.* ¶ 27. The defendant argued that Jones's testimony would "probably change the result on retrial" because "evidence that [Blaylock] *** was armed and voiced an intent to harm [the defendant] right before the shooting" would "corroborate [the defendant's] assertions of self-defense." *Id.* ¶ 41.

¶ 57 We rejected the defendant's argument in *Leach* because, even taking Jones's affidavit as true, the assertions contained therein did not establish the necessary elements of self-defense because Jones did not see the shooting. *Id.* ¶ 55. In doing so, we cited several decisions of our sister districts that reached the same result for the same reasons. See *People v. Horton*, 2021 IL App (1st) 180551-U, ¶¶ 32-35, 47 (*Horton I*) (denying the defendant leave to file an actual-innocence claim because the affiant was not present for the shooting and the defendant was claiming self-defense); *People v. Smith*, 2021 IL App (1st) 181178-U, ¶¶ 52-53 (rejecting the defendant's postconviction petition premised on an affidavit stating the affiant "heard gunshots, ran in their direction, saw the victim on the ground with a gun in his hand, and then saw another man take the gun and run away" because the affidavit "did not establish that the defendant saw a gun or knew the victim was armed and did not establish that the victim threatened imminent force against the defendant before the defendant shot him"); *People v. Lard*, 2024 IL App (1st) 220089-U, ¶¶ 36, 40-44 (affirming the summary dismissal of the defendant's actual-innocence claim because neither of the two affiants saw the actual shooting); *People v. Hollis*, 2021 IL App (1st) 200505-U, ¶ 32 (stating that because the affiants did not actually witness the shooting, they could not show the necessary elements of self-defense, such as whether the victim actually threatened imminent and unlawful force against the petitioner, such that the petitioner was justified in shooting the victim).

¶ 58 Since our decision in *Leach*, the First District has issued another decision relevant to our analysis in the present case: *People v. Horton*, 2025 IL App (1st) 221286-U (*Horton II*). In *Horton II*, the defendant filed his fourth motion for leave to file a successive postconviction petition based on the affidavit of another newly discovered eyewitness, Tremaine Johnson. *Id.* ¶ 7.

¶ 59 The defendant had been convicted of the first degree murder of Steven Williams

based upon the eyewitness testimony at trial that the defendant was at a block party on Brookline Street in Chicago Heights, Illinois, when an argument between the defendant and Williams broke out after the defendant's aunt ran over Williams's foot. *Id.* ¶ 4. The defendant left, returned shortly thereafter with a gun, walked quickly toward an unarmed Williams, and shot him three times. *Id.* The jury rejected the defendant's testimony that Williams had been armed and pulled his gun first. *Id.* ¶ 6.

¶ 60 The defendant's fourth motion for leave to file a successive postconviction petition was based upon Johnson's affidavit, which stated that on the day of Williams's shooting, Johnson was

> "walking down Brookline Street looking to buy 'weed and pills' from [Williams] when he heard [Williams] say to someone on the phone, 'he walkin my way now Im goin to kill this b***.' *** [Williams] then drew a firearm and 'the other person pull[ed] a gun.' Johnson ran. 'Shot was fired,' and Johnson heard [Williams] say, 'you shot me.' " *Id.* ¶ 8.

¶ 61 After noting that "conclusiveness is the most important factor of an actual innocence claim" (*id.* ¶ 14 (citing *Robinson*, 2020 IL 123849, ¶ 40)), the appellate court concluded that Johnson's affidavit was not "of such a conclusive nature that it would probably change the result on retrial," in part because "Johnson [did] not say that [the defendant] overheard Williams's threat or saw Williams pull a gun first" and "[r]egardless, Johnson ran and did not witness the shooting." *Id.* ¶¶ 15, 17.

¶ 62 The above cases all bear a factual similarity to the present case in that the affidavits did not support an actual-innocence claim because the facts alleged in the affidavit did not establish the elements of self-defense.

> "[I]n order to raise a claim of self-defense, a defendant must present evidence that (1) force was threatened against him; (2) he was not the aggressor; (3) the danger of harm was imminent; (4) the threatened force was unlawful; (5) he actually believed that a danger existed, that the use of force was necessary to avert the danger, and that the kind and amount of force used was necessary; and (6) his beliefs were reasonable." *Leach*, 2025 IL App (4th) 231586, ¶ 51 (citing *People v. Morgan*, 187 Ill. 2d 500, 533 (1999)).

¶ 63 Mays's written statement similarly fails to establish the elements of self-defense. Even taking Mays's statement as true—that half an hour before the shooting he saw a gun in Alexander's waistband and Alexander told him he was "about to kill that bitch ass nigga Law," Mays then left the party. He did not see the shooting itself or the events that immediately preceded defendant's decision to shoot Alexander. As a result, Mays's statement, taken as true, does not establish any of the elements of self-defense.

¶ 64 For instance, to establish self-defense, defendant must show that he was not the aggressor, yet Mays's statement has no bearing on that question. Because Mays was not present, he cannot say that defendant was not the aggressor. That is to say, we can believe Mays that when he encountered Alexander, he had a gun, but also believe the trial witnesses that, half an hour later, Alexander (1) did not appear to have a gun, (2) did not pull a gun on defendant, and (3) turned and ran when defendant began shooting. The eyewitnesses at trial described an ambush-style shooting, during which defendant came through the cut between the buildings shooting, meaning even if Alexander still had the gun, he did not pull it or have a chance to pull it. Accordingly, Mays's statement is not so conclusive it would likely change the result on retrial.

¶ 65 We similarly reject as nonconclusive the portion of Mays's statement that an

unidentified person told him after the shooting that "when [Alexander] got shot that [he] had his gun in his hand and that [the unidentified person] took the gun off of [Alexander's] dead body." Even if we assumed that *Allen* extended to successive petitions, meaning Mays's unnotarized written statement was the functional equivalent of a notarized affidavit for pleading purposes, *Allen* also requires that the evidentiary affidavit supporting a petition (1) "must contain a factual basis sufficient to show the petition's allegations are capable of objective or independent corroboration" and (2) "identify with reasonable certainty the sources, character, and availability of the alleged evidence supporting the petition's allegations." (Internal quotation marks omitted.) *Allen*, 2015 IL 113135, ¶ 32. The portion of Mays's statement recounting his conversation with the unidentified individual does not meet these requirements.

¶ 66 Moreover, the facts alleged fail to establish the elements of self-defense. For example, the unidentified individual told Mays that Alexander had a gun in his hand when he was shot, but this vague statement does not establish that the unidentified person saw the shooting, which as described is critical to a claim of self-defense. We are left to speculate whether the person making the statement actually witnessed the shooting or obtained the information second-, third-, or even fourth-hand. We are also left to speculate about each of the elements of self-defense.

¶ 67 The simple statement that Alexander had a gun in his hand when he was shot provides no information about whether defendant was the aggressor or if he was threatened with force and, if so, what type of force. As a result, we cannot evaluate whether the danger of harm was imminent and whether defendant's belief that he needed to shoot Alexander was necessary and reasonable.

¶ 68 For the foregoing reasons, we conclude that Mays's written statement, taken as true, is not "of such conclusive character that it would probably change the result on retrial." *Robinson*,

2020 IL 123849, ¶ 47. Accordingly, defendant's proposed successive petition failed to allege a colorable claim of actual innocence because the supporting documentation did not raise the probability that it was more likely than not that no reasonable juror would have convicted defendant in light of the new evidence.

¶ 69 III. CONCLUSION

¶ 70 For the reasons stated, we affirm the trial court's judgment.

¶ 71 Affirmed.