

2025 IL App (1st) 240160-U
No. 1-24-0160
Order filed September 26, 2025

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

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|--------------------------------------|---|-------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 06 CR 2347601 |
| |) | |
| DARIUS BAILEY, |) | Honorable |
| |) | Carl B. Boyd, |
| Defendant-Appellant. |) | Judge, presiding. |

JUSTICE TAILOR delivered the judgment of the court.
Justices Mikva and Oden Johnson concurred in the judgment.

ORDER

- ¶ 1 *Held:* The denial of defendant's motion for leave to file a successive postconviction petition is reversed where defendant made a colorable claim of actual innocence based on newly discovered evidence.
- ¶ 2 Defendant Darius Bailey appeals from the denial of his motion for leave to file a successive petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2020)). On appeal, he contends that he stated a claim of actual innocence based on newly

discovered evidence, specifically, an affidavit of a witness claiming that Bailey was not involved in the offense. We reverse and remand for second-stage proceedings.

¶ 3 Bailey was charged with murder, home invasion, and robbery of an individual 60 years of age or older, in connection with the death of 80-year-old Robert Winter. *People v. Bailey*, 2013 IL 113690, ¶ 1.

¶ 4 At Bailey's jury trial, Officer Rich Graziano testified that on September 20, 2006, he was driving and observed Bailey, whom he had known for a few years. Graziano identified Bailey in court. Graziano told Bailey that the Dolton police wanted to speak to him about an unrelated incident. Graziano handcuffed Bailey, searched him, and recovered, among other things, vehicle keys, house keys, and a checkbook. Graziano placed the keys back into Bailey's pocket. Graziano saw Robert Winter's name and address in the checkbook. Officer Tara Powers arrived to transport Bailey to the Riverdale police station.

¶ 5 Graziano then called dispatch to determine whether there were any burglary or theft reports from Winter's address. There were no reports, but Graziano requested police units check the premises. Graziano then went to Winter's residence, where two other officers were already present. In the front room, Graziano saw a deceased person, later identified as Winter, on the floor covered by a blanket. Graziano and the other officers searched the house and did not find another person inside. The detached garage was empty, so they asked dispatch to determine if Winter owned a vehicle. Graziano learned that Winter owned a blue 2004 Chevy Cavalier.

¶ 6 Powers arrived at the residence with keys. Graziano used one of the keys to open and lock the front door of Winter's residence. Graziano asked Powers to look for Winter's vehicle at the

scene of Bailey's arrest. A vehicle was discovered, and Graziano used other keys on the key ring to unlock and lock the vehicle.

¶ 7 Around 7 p.m., Graziano went to the Riverdale Police Department and saw Bailey in lockup. Graziano and Detective Rich Belcher took Bailey to the interview room for questioning, which was audio and video recorded. The video was published, and a transcript of the video was entered into evidence. Neither the video nor the transcript is included in the appellate record. Belcher read Bailey his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). Graziano did not give Bailey details about the murder because Graziano "wanted [Bailey's] version of what happened."

¶ 8 Bailey first told Graziano and Belcher that he found the keys and checkbook outside a night club a "couple" of minutes before Graziano arrested him. Bailey did not know what vehicle the keys matched. Later, Bailey said that he found the keys and checkbook in an alley the night before. Bailey opened the checkbook, went to the address on the checks, saw the garage door partially open, and took a blue Chevy Cavalier from the garage. The interview continued, and Bailey said that he entered Winter's residence through the open back door. While Bailey looked around the residence, Winter came from downstairs. After a "tussle," Bailey tied up Winter "the best he could" with a cord from the television and covered Winter with what Bailey believed to be a jacket. Bailey stopped in the kitchen to take the vehicle keys and checkbook before exiting the back of the residence.

¶ 9 On cross-examination, Graziano acknowledged that Bailey never mentioned a cord before Graziano asked, "Where did you get the cord from?" Bailey never mentioned choking Winter or used the words, "I strangled him." Bailey only stated that he tied Winter's arms and legs. In a

picture of Winter's body, entered into evidence, Graziano noted that Winter was under a blue and white blanket.

¶ 10 On redirect examination, Graziano noted that he did not transcribe the video that was shown to the jury. Bailey referred to "tussling" with an "old man" before either Graziano or Belcher said that the victim was an "old man."

¶ 11 Joseph Cogan, a Cook County medical examiner, testified that Winter had a "brown electrical extension cord wound around the neck with knots on either side." Cogan found evidence of suffocation, manual strangulation, and ligature strangulation. There were no defensive injuries. Winter was incapacitated before the ligature was applied. Cogan posited that Winter died of strangulation, and the manner of death was homicide. On cross-examination, Cogan noted that he did not find ligatures around Winter's legs.

¶ 12 Powers testified that while driving Bailey to the police station, she heard something hit the floor of the squad car. When Bailey was searched in the lockup area of the police station, the set of keys that were in his pocket were not recovered. Powers searched the back of the squad car and found the keys under the driver's seat. She brought the keys into the lockup and asked Bailey if they belonged to him. Bailey told Powers that the keys belonged to his aunt. Graziano gave Powers information about Winter's vehicle and told her to search the area where Bailey was arrested. Powers located the vehicle about 75 feet from where Bailey was arrested.

¶ 13 Robert Deel, a crime scene investigator with the Illinois State Police, testified that he did not see evidence of forced entry to any door or window in Winter's residence or garage. In the bedroom, Deel saw personal items on the bed and the floor, dresser drawers open with items

removed, and the closet door open with items thrown on the floor. Another room in the house was in similar condition.

¶ 14 In the front room, Deel saw Winter's body covered with a blanket. The blanket was removed, and Deel observed Winter's body face-down with a brown electrical extension cord wrapped around his "buttock and upper leg area." Deel rolled Winter's body over and observed that the electrical cord extended around his upper leg and chest area, and was wrapped around his neck with a double knot. Additionally, Winter's pockets were turned inside out.

¶ 15 Deel found fingerprints in the bedroom on a metal tin and the back of a drawer pull on the dresser. He removed the drawer pull, placed it in a plastic bag, and gave it to the Riverdale Police Department. Deel also found fingerprints in the living room area on a plastic insert that contained an insurance card.

¶ 16 Barbara Wilkins, a forensic scientist with the Illinois State Police, testified that she matched the fingerprints from the back of the drawer pull and the plastic insert with the insurance card with a fingerprint of Bailey. There were no fingerprints suitable for comparison on the electrical cord as it had a narrow surface.

¶ 17 On cross-examination, Wilkins stated that it would not be impossible to remove a print from an electrical cord. On redirect examination, Wilkins stated that a print removed from an electrical cord might not have enough detail for comparison.

¶ 18 Bailey testified that Winter was his mentor after they met in March 2006. Bailey would come to Winter's home to talk and do odd jobs, such as helping with Winter's lawn or laundry and cleaning the garage.

¶ 19 On September 19, 2006, Bailey was at Winter's house to check on him. Bailey asked to borrow Winter's vehicle to pick up his son's mother when she arrived in town the next day. Winter consented. After leaving Winter's residence, Bailey went home and then visited friends.

¶ 20 On September 20, 2006, Bailey was driving Winter's vehicle. As Bailey was walking to a restaurant, Graziano arrested him. Bailey sat in lockup for about 2½ hours. Graziano eventually told Bailey that Winter was dead and that Graziano believed Bailey "did it." Bailey was "shocked and confused." Bailey told Graziano the truth, which was that Winter was his mentor, and explained why he had Winter's vehicle and checkbook. Bailey found Winter's checkbook in the center console of the vehicle and placed it in his pocket with the intention of returning it to Winter. Graziano stated that he did not believe Bailey and knew what happened. If Bailey did not say what Graziano then told him to say, he "wouldn't be going home anytime soon."

¶ 21 Graziano brought Bailey into the interview room. Bailey did not tell the truth in the interview room because he had already tried to tell the truth. Bailey told Graziano that he found the keys on the ground and took the vehicle to "get out of the situation." Bailey admitted to killing Winter because there was "a lot of pressure" on him and Graziano already stated that if he did not repeat what Graziano said, he would not go home. Bailey tried "alternate routes," and it did not work how he "figured," so the only recourse was repeating what Graziano told him to say.

¶ 22 On cross-examination, Bailey stated that he knew Graziano for "maybe a year." At the time he was arrested, Bailey told Graziano that Winter was his mentor. Neither Graziano nor Powers asked Bailey to whom the keys belonged. Graziano asked about the checkbook and Bailey told him it was Winter's.

¶ 23 Bailey never mentioned on video that he knew Winter, that Winter was his mentor, or that he was Winter's handyman. He acknowledged that he lied to the officers in the first two stories he told them. Bailey maintained that he did not kill Winter and did not go through Winter's drawers or wallet.

¶ 24 The State called Powers and Graziano in rebuttal. Powers again testified that Bailey told her that the keys belonged to his aunt. Graziano testified that before entering the interview room, Bailey did not tell Graziano that he knew Winter or that Winter was his mentor. Graziano did not tell Bailey what to say in the interview room.

¶ 25 The jury found Bailey guilty of first degree murder, home invasion, and robbery. At sentencing, the trial court found Bailey eligible for the death penalty, and imposed concurrent prison terms of natural life for murder, 30 years for home invasion, and 15 years for robbery. The supreme court held that Bailey was ineligible for the death penalty or a natural life sentence and remanded for resentencing. *Bailey*, 2013 IL 113690, ¶¶ 64-65, 71-72. On remand, the trial court imposed 60 years imprisonment for first degree murder. This court affirmed and corrected the mittimus. *People v. Bailey*, 2015 IL App (1st) 140776-U, ¶¶ 1, 13.

¶ 26 Bailey filed three unsuccessful petitions pursuant to the Act. It does not appear that he appealed.

¶ 27 On September 3, 2019, Bailey filed a motion for leave to file a successive postconviction petition, claiming his 60-year sentence was unconstitutional as applied to him, constituted a *de facto* life sentence, and violated the eighth amendment of the United States constitution and the proportionate penalties clause of the Illinois Constitution. *People v. Bailey*, 2025 IL App (1st) 230902-U, ¶ 10. Counsel was appointed. *Id.* ¶ 11. The circuit court granted the State's motion to

dismiss Bailey's petition. Bailey appealed, arguing he received unreasonable assistance of postconviction counsel, and we affirmed. *Id.* ¶¶ 2, 34.

¶ 28 On January 14, 2020, Bailey filed the motion for leave to file a successive postconviction petition at issue in this appeal, claiming actual innocence.

¶ 29 Bailey attached an affidavit from Terrance Roberts, signed on September 4, 2019. Roberts stated that on September 19, 2006, at around 10 p.m., he was at his friend Bob's (Winter's) house to use the bathroom and to see if Winter needed help around the house. Roberts used the bathroom and was sitting on the basement stairs talking on his phone when he heard knocking at the front door. Winter opened the front door. Roberts saw individuals named Chris and Mike (no surnames given) enter and then heard arguing and noises like fighting. Roberts looked around the corner towards the front room and saw Chris on top of Winter and Mike going to the bedroom. Roberts was scared and did not want Chris and Mike to see him, so he hid in the basement until he thought they left. He left the basement, saw Winter on the floor, ran out the back door, and went home.

¶ 30 "[A] little while back," Roberts saw pictures of "Boo Man" (Bailey) on a friend's Facebook page. Roberts had seen Bailey helping around Winter's house. Roberts later learned that Bailey was in jail for killing Winter, although Bailey was not one of the two individuals Roberts saw in Winter's home that night. Roberts knew Chris and Mike because they were always across the street from Winter's house and smoking on the porch. Bailey did not resemble Chris, who was "light skinned and tall with braids," or Mike, who was "light skinned to[o] but short with a star tattoo on his face."

¶ 31 Roberts maintained that Bailey was not in Winter’s house that night. Roberts never told anyone because he did not want to get involved with the police. Now, however, he still feared something could happen to him, but he knew this was “the right thing to do.”

¶ 32 On December 15, 2023, the circuit court denied Bailey leave to file the petition stating only, “I am inclined to deny leave to file a successive PC. It’s not a matter of right, so I am denying the successive PC.”

¶ 33 On appeal, Bailey argues that his successive postconviction petition made a substantial showing of actual innocence based on Roberts’ affidavit.

¶ 34 The Act provides a three-stage procedure by which those under criminal sentence can assert that their convictions resulted from a substantial denial of their rights under the United States Constitution, the Illinois Constitution, or both. 725 ILCS 5/122-1(a) (West 2020); *People v. Coleman*, 183 Ill. 2d 366, 378-79 (1998); *People v. Morales*, 2019 IL App (1st) 160225, ¶ 17. The Act contemplates the filing of only one postconviction petition. *People v. Sanders*, 2016 IL 118123, ¶ 24. There are, however, two bases upon which the bar against successive petitions will be relaxed: when the petition (1) states a colorable claim of actual innocence or (2) establishes cause and prejudice. *Id.*

¶ 35 An actual innocence challenge is “based on principles of fundamental fairness and borne out of our constitutional obligation to afford a person who presents new evidence that persuasively indicates that he or she is factually innocent with the additional process necessary to prevent a fundamental miscarriage of justice.” *People v. Taliani*, 2021 IL 125891, ¶ 67. “Our express reason for allowing a freestanding claim of actual innocence to be cognizable under our Post-Conviction Hearing Act is our firm belief that allowing an innocent person to remain incarcerated would

offend all notions of fairness and due process.” *Id.* (citing *People v. Washington*, 171 Ill. 2d 475, 488-89 (1996)). Claims of actual innocence can be raised repeatedly so long as the evidence is newly discovered. *People v. Mendoza*, 2024 IL App (1st) 231588, ¶ 38. Actual innocence claims are not subject to the cause-and-prejudice test. *Id.*

¶ 36 To succeed on a claim of actual innocence, a defendant must present newly discovered, material, noncumulative evidence that is so conclusive that it probably would change the result on retrial. *People v. Robinson*, 2020 IL 123849, ¶ 47. Newly discovered evidence is evidence that was discovered after trial and that the defendant could not have discovered earlier through due diligence. *Id.*

¶ 37 Bailey argues that Roberts’s affidavit is newly discovered, material and non-cumulative, and sufficiently conclusive. The State concedes that the affidavit is newly discovered, material, and noncumulative, but argues that the affidavit is not conclusive of Bailey’s actual innocence.

¶ 38 The conclusive character element requires the defendant to present evidence placing the trial evidence in a different light that undermines the court’s confidence in the judgment of guilt. *Id.* ¶ 56. New evidence is conclusive when, after considering it along with the trial evidence, a different result probably would occur. *Id.* ¶ 47. “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.” *Id.* ¶ 48.

¶ 39 At the leave-to-file stage, the postconviction court accepts as true all well-pled allegations, unless they are positively rebutted by the record. *Robinson*, 2020 IL 123849, ¶ 45. Even at the second stage of postconviction proceedings, credibility is not an issue and we must take as true all well-pleaded facts in the defendant’s petition and in the affidavits that are not positively rebutted

by the record. *Sanders*, 2016 IL 118123, ¶ 42; *People v. Watson*, 2022 IL App (5th) 190427, ¶ 33. Credibility determinations are only made at a third-stage evidentiary hearing. *Sanders*, 2016 IL 118123, ¶ 42. Thus, the court must determine “only whether the new evidence, if believed and not positively rebutted by the record, could lead to acquittal on retrial.” *Robinson*, 2020 IL 123849, ¶ 60. This court reviews a denial of leave to file a successive petition *de novo*. *Id.* ¶ 40.

¶ 40 Graziano’s trial testimony and Bailey’s videotaped statement to police admitted into evidence would have to be weighed against the evidence in Roberts’ affidavit, namely, that Bailey was not present at the time of the incident, which, at the second stage, must be taken as true. There is no way to evaluate the relative merits of this evidence without a credibility determination, which is only appropriate at the third stage of proceedings. *People v. Carter*, 2013 IL App (2d) 110703, ¶ 74.

¶ 41 We disagree with the State’s contention that the trial evidence was overwhelming where Bailey’s fingerprints were found on the drawer pull and plastic wallet sleeve, police found Winter’s vehicle and house keys in Bailey’s pants pocket, Bailey told several stories to police when questioned, and Bailey admitted to police that he entered Winter’s home through the backdoor. Roberts’ affidavit, taken as true, supports Bailey’s testimony that he helped Winter around the house, and could explain why Bailey’s fingerprints were found in Winter’s home. The supreme court has noted that “recognizing the existence of a conflict with the trial evidence is not the same as finding that the new evidence is positively rebutted.” *Robinson*, 2020 IL 123849, ¶ 60; *cf.* *Sanders*, 2016 IL 118123, ¶ 48 (new evidence was positively rebutted by conclusive autopsy results). Here, Bailey’s statement to the police contradicts Roberts’ affidavit, but does not positively rebut it.

¶ 42 We hold that Bailey carried his burden to make a substantial showing of a claim of actual innocence. Taken as true, Robert's affidavit averring that Bailey was not present when Chris and Mike killed Winter supports Bailey's testimony that he did not kill Winter. As Bailey has set forth evidence that is newly discovered, material and noncumulative, and conclusive, he has made a colorable claim of actual innocence in order to be granted leave to file his successive postconviction petition. *Robinson*, 2020 IL 123849, ¶ 47.

¶ 43 Thus, we reverse the judgment of the circuit court and remand with instructions that defendant be allowed leave to file his successive postconviction petition and his claim of actual innocence be advanced to second-stage proceedings, and for the appointment of counsel.

¶ 44 Reversed; cause remanded.