

Associate Judge
Alfredo Maldonado

JUL 20 2015

Circuit Court - 2113

No. 80 C 01405

Hon. Alfredo Maldonado

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ORDER GRANTING PETITION FOR RELIEF FROM JUDGMENT AND MOTION FOR NEW TRIAL PURSUANT TO 735 ILCS 5/2-1401

Pursuant to 735 ILCS 5/2-1401, the Petitioner, Daniel Andersen, seeks to set aside his 1982 convictions for first degree murder and attempted rape which were entered after a jury trial in the above captioned matter. On June 17, 2015, this Court heard oral arguments by respective counsels for the petitioner and the State on the pending Petition for Relief from Judgment and Motion for New Trial. The petitioner asks this Court to grant his petition as a matter of law, while the State asks this Court to deny the petition, or, in the alternative, to hold an evidentiary hearing on the allegations contained in the petition. After considering the parties' oral arguments and pleadings in this matter, this Court grants the relief requested in the petition.

Section 2-1401 actions are separate civil proceedings initiated to bring facts to the attention of the trial that would have precluded entry of judgment in the original action

On January 19, 1980, the victim, Cathy Trunko, died after being attacked and stabbed. Two days later, about one block from where the murder occurred, Chicago Police officers recovered a bloody knife

stuck into a yard. On January 24, 1980, Chicago Police officers arrested the petitioner, Daniel Andersen, for disorderly conduct. While in police custody, the petitioner made inculpatory statements admitting that he used the knife, which police found near the crime scene, to kill the victim and that she died after he and the victim engaged in a physical struggle. The knife and fingernail clippings from the victim were all preserved as evidence by the Chicago Police Department.

Relying upon the petitioner's inculpatory statements and the knife, the State argued at trial in 1982 that the evidence overwhelmingly proved that the petitioner murdered the victim. Petitioner's defense counsel contended that the inculpatory statements were coercively fed to the petitioner by the police and that the statements were false. On March 11 1982, a jury convicted the petitioner of first degree murder and attempted rape.

Seeking to set aside the convictions, the petitioner initiated this pending action under 735 ILCS 5/2-1401 of the Code of Civil Procedure. A Section 2-1401 petition seeks to bring facts to the attention of the trial court that would have precluded entry of a final judgment had the facts been known at the time of entry of the judgment. *People v. Haynes*, 192 Ill.2d 437, 737 N.E.2d 169 (2000). A petition under Section 2-1401 must be filed in the same proceeding as the original judgment, but the petition is a separate action. 735 ILCS 5/2-1401(b). The burden of proof for a Section 2-1401 petition is a preponderance of the evidence. *Smith v. Airoom, Inc.*, 114 Ill.2d 209, 499 N.E.2d 1381 (1986). A fact dependent Section 2-1401 challenge to

a final judgment requires specific factual allegations on the following three elements: 1) the existence of a meritorious defense in the original action; 2) due diligence in presenting the defense or claim in the original action; and 3) due diligence in filing the Section 2-1401 petition. *Airoom*, 114 Ill.2d 209.

While Section 2-1401 is a civil remedy, its remedial powers also apply to criminal matters like the above captioned case. *People v. Harvey*, 196 Ill.2d 444, 753 N.E.2d 293 (2001). Ordinarily, Section 2-1401 petitions must be filed within two years of entry of the final order in the original action, but there is an exception to the two year limitation for criminal cases where DNA testing is involved. 735 ILCS 5/2-1401(c); 725 ILCS 5/116-3. For Section 2-1401 relief based on new evidence, a petitioner must demonstrate that the new evidence is not cumulative of the original trial evidence and that the new evidence is so conclusive it would probably change the results at trial. See *People v. Waters*, 328 Ill.App.3d 117, 764 N.E.2d 1194 (1st Dist. 2002).

Notwithstanding the limitations exception for criminal cases, civil rules apply to 2-1401 petitions in criminal matters. See *People v. Ligon*, 239 Ill.2d 94, 940 N.E.2d 1067 (2010). In civil cases, a movant requesting relief as a matter of law must establish that no disputes of material facts exist or, where materials facts are not in dispute, that reasonable minds would not draw conflicting inferences. See, e.g., *Mills v. McDuffa*, 393 Ill.App.3d 940, 913 N.E.2d 114 (2nd Dist. 2009) (characterizing the granting of a Section 2-1401 petition based on the pleadings alone as akin to summary judgment and reversing

the trial court's decision even though the respondent did not submit contrary evidence where reasonable minds could draw different inferences); See also *Williams v. Manchester*, 228 Ill.2d 404, 417, 888 N.E.2d 1 (2008) ("A triable issue precluding summary judgment exists where the material facts are disputed or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts."). When the facts supporting a Section 2-1401 petition are contested, a full and fair evidentiary hearing must be held. *Airoom*, 114 Ill.2d at 223. See also *Warren County Soil and Water Conservation District v. Walters*, 2015 IL 117783, ¶51, 2015 Ill.LEXIS 509 (May 21, 2015) (holding that fact dependent Section 2-1401 challenges are governed by the requirements in *Airoom*).

Petitioner exercised due diligence in presenting his original defense and in filing this new action

In 2013, an uncontested court order authorized Cellmark Forensics to conduct deoxyribonucleic (DNA) testing on samples taken from the knife that police found and from underneath the victim's fingernails. DNA tests excluded the victim and the petitioner as sources of DNA on the knife blade and hilt and also excluded the petitioner as a source of the DNA found under the victim's fingernails.

As required by the second and third *Airoom* prongs, petitioner contends that he was sufficiently diligent in defending the original action and in raising his pending claims. Because DNA testing did not exist when the jury trial in this matter occurred in 1982, the petitioner could not have presented DNA evidence to the jury. Moreover, before DNA testing began in 2013, the petitioner challenged

his convictions through a direct appeal, post-conviction proceedings and a federal habeas corpus action. Soon after receiving DNA results from Cellmark, the Petitioner filed his Section 2-1401 petition. In its pleadings and oral arguments, the State does not challenge the petitioner's due diligence in the defense of the original action or his due diligence in filing the Section 2-1401 petition. Therefore, there is no factual dispute between the parties as to the second and third *Airoom* prongs.

There is no material dispute as to the DNA results supporting the petitioner's claim of a meritorious defense and such evidence conclusively makes it probable that the DNA results would change the outcome of a new trial

Petitioner argues that the State does not deny the DNA results and that the petition should be granted as a matter of law because the results conclusively mean that the petitioner did not murder the victim. Although the State does not deny the DNA results, the State questions the reliability of the results because contamination over the last three decades may have affected the test results. The State also contends that the DNA results from the fingernail clippings do not conclusively relate to this case. Furthermore, the State suggests that the DNA testing methods used in this case leave open questions that have not been answered by the petitioner. However, the petitioner maintains that the issues raised by the State are speculative at best.

Citing *Dodds*, the State argues that a claim of actual innocence, like this one, requires an evidentiary hearing to determine the legal significance of the DNA results. See *People v. Dodds*, 344 Ill.App.3d

513, 801 N.E.2d 63 (1st Dist. 2003). The State's position on the necessity of an evidentiary hearing misapplies *Dodds*. A fact based Section 2-1401 petition may be granted without an evidentiary hearing where a challenge to the facts supporting the petition does not exist. See Warren County Soil Conservation District, 2015 IL 117783, ¶51, 2015 Ill.LEXIS 509 (May 21, 2015); *People v. Vincent*, 226 Ill.2d 1, 8-10, 871 N.E.2d 17 (2007). Therefore, an evidentiary *Dodds* hearing would not be required in this matter if there were no material facts in dispute.

The fingernail clippings

Evidence in this case indicates that the victim fought her attacker. Blood underneath the victim's fingernails, abrasions on her body and face and a cut on one of her fingers all strongly point to a defensive struggle before the victim's death. In fact, relying upon the petitioner's statements and the victim's injuries, the State's theory of the case at trial included the premise that the victim struggled with the petitioner as she tried to defend herself.

The petitioner concurs with the theory that the victim struggled with her attacker. However, DNA testing revealed two different male profiles underneath the victim's fingernails, and the petitioner was excluded as a source of DNA for both profiles. Since there is no evidence suggesting any sexual activity for the victim shortly before her death or any other likely origin for the DNA, the petitioner contends that the DNA found underneath the victim's fingernails came from her attacker or attackers. Consequently, the petitioner argues

that his DNA exclusion proves that he was not involved in the victim's murder.

The petitioner cites several academic works to support his claims. These scholarly works reference studies which indicate the unlikelihood of another person's DNA getting underneath someone else's fingernails absent intimate physical contact (such as sexual activity or a violent physical struggle). The petitioner also cites studies demonstrating the relatively short time frame (hours) for foreign DNA to remain underneath a person's fingernails without being removed by everyday routine activities.

Notwithstanding their theory of the case at trial, the State contends that there is no conclusive evidence indicating how the male DNA profiles got underneath the victim's fingernails. The State posits that the DNA could have come from any number of different sources and theorizes, without any factual support, that the DNA was underneath the victim's fingernails long before her murder. Moreover, the State does not refute the petitioner's academic works or offer any contrary materials in support of its contentions.

As to the DNA results from the victim's fingernail clippings, there is no dispute of fact between the parties. The only dispute is what inferences arise from the DNA results. While the petitioner offers a cogent inference that the DNA from the victim's fingernail clippings resulted from her murder, the State does not offer its own logical inference. The State merely advances the absence of an inference, suggesting that too much remains unknown for any reasonable inference to be drawn. The Court respectfully disagrees.

Looking at the evidence in this matter, it is likely that the victim struggled with her attacker before she died. The petitioner's exclusion as a source of the DNA found underneath the victim's fingernails is an extraordinarily compelling fact which casts doubt on his involvement in the victim's death. In this Court's view, the petitioner's exclusion as a source of the DNA underneath the victim's fingernails is conclusive evidence that would likely change the result at trial. See *People v. Davis*, 2012 IL App (4th) 110305, 966 N.E.2d 570 (4th Dist. 2012). Of course, upon retrial, the State would be able to raise its concerns regarding the DNA testing with the trier of fact. However, considering the pleadings and arguments of the parties as to the Section 2-1401 petition, this Court concludes that a material dispute of fact as to a meritorious defense does not exist and that reasonable minds would not draw different inferences from the petitioner's exclusion as a source of the DNA underneath the victim's fingernails.

The knife

At trial, the central piece of physical evidence against the petitioner was the knife. The victim's blood type (Type A which is shared by forty percent of the general population) matched blood samples from the knife that the police found near the locale of the victim's murder. In his statements to law enforcement, the petitioner confessed to murdering the victim with that very knife. Thus, the knife was the lynchpin of the State's case against the petitioner.

DNA tests on samples from the sharp edge of the knife and hilt exclude the victim as a source of the DNA. The petitioner argues that

this exclusion proves that the knife has no connection to the victim's murder. Even during the trial itself, long before the DNA exclusion, the petitioner's defense counsel attempted to convince the jury that the knife was not the murder weapon because of inconsistencies with other evidence. In addition to the victim's DNA exclusion, the petitioner was also excluded as a source of the DNA found on the knife's blade, on a groove on the blade and on the knife's hilt. Testing on the knife's handle showed a mixture of male DNA profiles but was inclusive as to the petitioner.

Like the DNA tests on the victim's fingernail clippings, the State does not deny the DNA test results regarding the knife. The State's challenge rests on the inferences to be drawn from the evidence. The State suggests that contamination over the last thirty years affected the DNA testing, but, in advancing this theory, the State offers no evidence or scholarly works in support. The State merely offers suppositions and has failed to raise a sufficient factual challenge to the petition's claims.

Although the State correctly indicated that some questions about DNA testing on the knife linger, the petitioner does not need to demonstrate that the new evidence is completely dispositive of an issue for it to likely change the result upon a retrial. The evidence only needs to be conclusive enough to probably change the result at trial. *Davis*, 2012 IL App (4th) 110305, ¶¶62,63.

The DNA test results on the knife absolutely undermine the contention that the knife was the murder weapon. Once the knife's role in the victim's death becomes an open question, the evidentiary

value of the petitioner's inculpatory statements similarly becomes suspect. In this Court's view, the DNA results regarding the knife are conclusive enough to probably change the result at a new trial. Upon retrial, the State will be able to raise its concerns regarding the DNA testing before the trier of fact. However, considering the pleadings and arguments of the parties as to the Section 2-1401 petition, this Court finds that a material dispute of fact as to a meritorious defense does not exist and that reasonable minds would not draw different inferences regarding the results of the DNA testing on the knife.

Conclusion

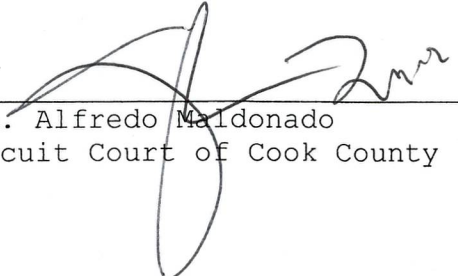
Considering all the evidence in this matter, the Court determines that the DNA testing in this case is favorable for the petitioner and that the DNA exclusions are legally significant on these proceedings. *People v. Dodds*, 344 Ill.App.3d 513, 801 N.E.2d 63 (1st Dist. 2003). As to both the DNA testing on the fingernail samples and the knife, the petitioner has established that no material dispute of fact exists and that reasonable minds would not differ as to the inferences to be drawn from the undisputed facts in this matter. The DNA evidence presented by the petitioner is certainly not cumulative of the evidence presented in the original trial and is conclusive enough to probably change the result at a new trial. *Waters*, 328 Ill.App.3d 117.

For the reasons set forth above, this Court finds, as a matter of law, that the petitioner has proven by a preponderance of the evidence all three of the *Airoom* prongs: 1) that a meritorious defense exists

in the original action; 2) that the petitioner demonstrated due diligence in his defense in the original action; and 3) that the petitioner exercised due diligence in raising his claims in his Section 2-1401 petition. Petitioner's Section 2-1401 petition is granted. His convictions in the above captioned matter are hereby vacated and a new trial is ordered to occur.

SO ORDERED.

ENTERED:



Hon. Alfredo Maldonado
Circuit Court of Cook County

DATE: 7/20/15

**Associate Judge
Alfredo Maldonado**

JUL 20 2015 

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