

Deandre Coleman and one count of attempted murder in the shooting of Deandre's brother, Revere Coleman. The defendant argued at trial that he acted in self-defense and in defense of his friend, Wesley Momon. Although neither of the Coleman brothers was armed with a gun, defense witnesses testified that they saw a silver object in Deandre Coleman's hand, which they thought was a gun. Two objects were found at the scene which might have been perceived as weapons—a box cutter and a wrench. State witnesses, however, denied seeing any object in Deandre's hand at any time.

¶ 4 The events at issue took place in an intersection in a residential area of Belleville. Individuals present at the scene included the defendant and two of his friends, Wesley Momon and Matthew Wren, and Wesley's friend, Shameka Brown. Also present were Mary and Veronica Blassingame; their cousin, Tameka Lilton; Tameka's boyfriend, Deandre Coleman; and Deandre's older brother, Revere Coleman.

¶ 5 At the defendant's trial, witnesses gave varying accounts of the events leading up to the shooting of the Coleman brothers. There were essentially two versions of events. Witnesses for the State testified that Shameka Brown started a physical fight with Mary Blassingame. Tameka Lilton helped Mary, but no one else joined in the fight. At one point, Wesley Momon stepped in and pulled Tameka away from Shameka. According to Tameka, this caused her to fall to the ground. This led to a heated verbal exchange between Wesley and Deandre Coleman. The police arrived on the scene, Mary was arrested, and Shameka was taken by ambulance to the hospital. The rest of the group dispersed.

¶ 6 Mary Blassingame testified that she was taken to the police station, but she was not charged and was released half an hour later. She and the others regrouped at the

intersection approximately an hour after the fight between Mary and Shameka had ended. The Coleman brothers returned in their car. This time, their oldest brother, Marlon, was with them. Revere testified that Marlon came with them so he could meet Mary and Veronica's oldest sister, Sherry. The Blassingame sisters lived in a house near the intersection. According to State witnesses, the three Coleman brothers, none of whom were armed, got out of their car and started walking towards the Blassingame home. The defendant, Matthew Wren, and Wesley Momon approached them. A fistfight then broke out between Wesley and Deandre. Neither was armed. Deandre knocked Wesley to the ground and continued to punch him. Revere tried to pull his brother off of Wesley. Revere testified that he heard Wesley yell, "Shoot this motherfucker off of me." The defendant then shot Revere in the face.

¶ 7 Revere testified that he went to the Blassingame house to try to call for help, but he could not find the telephone. When he went back outside, he saw the defendant standing over Deandre, pointing a gun at him. Revere heard the defendant say that he was going to "splatter [Deandre's] brains all over the street" and asking onlookers, "Do any of you *** want some?" Revere passed out at this point, and he testified that he did not see the defendant shoot Deandre.

¶ 8 Veronica Blassingame testified that after the defendant shot Revere, everyone began to run from the scene. She testified that Deandre, too, attempted to run away, but the defendant grabbed him and shot him. She testified to hearing the defendant ask if anyone else "want[ed] some." Mary Blassingame testified that she did not actually see the defendant shoot Revere, but she did see Revere grab his face, and then she saw the defendant grab Deandre and shoot him. She acknowledged that she had initially told police that Deandre was shot before Revere.

¶ 9 Defense witnesses told a different story. They testified that the earlier fistfight

between the young women broke out when Mary, Tameka, and Veronica all attacked Shameka Brown. Like the State's witnesses, defense witnesses testified that Wesley Momon stepped in and pulled Tameka away from Shameka, leading to a verbal exchange between the two. According to Wesley, Tameka did not fall to the ground as a result of his action.

¶ 10 Wesley testified that, before the group dispersed, someone told him that the Coleman brothers do not "play" and that they are known to use firearms. He testified that when the group dispersed, he went to his house with the defendant and Matthew Wren. Wesley and Matthew went upstairs to retrieve a gun belonging to Wesley's father. The defendant stayed downstairs, talking to two of the Momons' neighbors. The defendant testified that when he saw Wesley coming downstairs with the gun, he told him to put it away. According to Wesley, it was Joyce (one of the neighbors) who told him to put the gun away. Both testified that Wesley did put the gun away. However, Wesley testified that later, after all the people involved had regrouped on the street, Tameka and the Blassingame sisters told his group of friends that the Coleman brothers were going to return to "cause trouble" for them. After this, Wesley went back to his house to retrieve his father's gun.

¶ 11 Defense witnesses all testified that when the Coleman brothers returned, they approached Matthew, Wesley, and the defendant. They all testified that Deandre was holding a silver object that they believed was a gun. Wesley and the defendant both testified that Wesley gave the defendant the gun at the defendant's request. All defense witnesses testified that Deandre and Revere approached Wesley, and Deandre hit him from behind with the silver object in his hand. They testified that Wesley fell, and the defendant immediately shot both Deandre and Revere. The defendant testified that he shot Deandre because he thought that Deandre was about to shoot

Wesley. He testified that he shot Revere because Revere lunged at him. Neither Wesley nor Matthew testified as to the order in which the Coleman brothers were shot. Wesley testified that he heard two gunshots but did not actually see the defendant shoot the Coleman brothers because he was lying on the ground at the time. Matthew testified that he saw the defendant shoot Deandre and that he heard two gunshots, but did not actually see the defendant shoot Revere. Like the State witnesses, the defense witnesses all testified that everyone ran from the scene.

¶ 12 As previously mentioned, a wrench was found at the scene. Whether that wrench could have been the object defense witnesses saw in Deandre Coleman's hand was a key issue in the case. Steven Krug, a Belleville detective who testified in the trial, stated that the wrench was found on a narrow strip of grass in front of a house bordering the intersection where the fight occurred. As we will discuss in more detail later, however, a police report indicated that Officer Taylor, the patrolman who arrived on the scene first, told Detective Krug and Detective Stephen Schmulbach that the wrench was initially spotted in the intersection itself and moved by unknown persons to the nearby strip of grass. Neither Detective Schmulbach (who wrote the report) nor Officer Taylor testified at trial. Detective Krug admitted that no attempt was made to test the wrench for fingerprints. He explained that this was because the surface of the wrench was not likely to yield any prints.

¶ 13 Detective David Frame testified that Wesley Momon had a circular abrasion on his back. The wrench found at the scene had a circular head. However, Detective Frame also testified that he believed the abrasion looked consistent with rug burn and did not look like a bruise.

¶ 14 The defendant admitted at trial that he left the state for nearly four months after the events at issue occurred. He was arrested when he was found hiding in the attic

of his mother's home.

¶ 15 The State's Attorney began closing arguments by reminding jurors that witnesses heard the defendant say that he was going to splatter Deandre's brains all over the street and ask onlookers if any of them "wanted some" too. The prosecutor then asked jurors, "Are these the words of a young man who wasn't looking for trouble, that had to defend himself and someone else, that panicked?" He went on to argue that the defendant's claim that he acted in self-defense was not plausible for various reasons. He pointed out that there was no need for the defendant to shoot the unarmed Revere Coleman and that it made no sense for the defendant to shoot Revere before he shot Deandre if he was only trying to defend Wesley from Deandre. He also highlighted the evidence that the defendant evaded arrest until he was found hiding in his mother's attic four months after the murder.

¶ 16 Then the prosecutor turned his attention to the wrench. He argued, without elaborating, "I submit to you there was no wrench." In response to this argument, defense counsel held up the wrench and told the jury: "Here it is. Here is the wrench. Here is the wrench that was found at the intersection where Deandre's body was found ***. Here is the wrench. It does exist." Counsel then argued that other evidence supported the defendant's contention that Deandre was armed with the wrench and used it to hit Wesley Momon.

¶ 17 In rebuttal, the prosecutor argued: "The wrench was there. I don't want you to—Mr. Piper misspoke. The wrench was there." He continued: "But I ask you to recall where it was found. I asked all the different witnesses where the fight was. Everyone had the fight out in the street. The fight was out in the street. When the police arrived, Deandre Coleman's body [was] out in the street. The wrench [was] found over by the pink house[,] not out in the street where Deandre's body was."

Jurors were instructed on both self-defense and second-degree murder. They were also instructed that closing arguments are not evidence. The jury found the defendant guilty. After denying the defendant's posttrial motions, the court sentenced him to 45 years for Deandre Coleman's murder and 20 years for the attempted murder of Revere Coleman.

¶ 18 The defendant filed a direct appeal, in which he challenged both his convictions and sentences. *People v. Bannister*, No. 5-02-0244 (Apr. 29, 2004) (unpublished order pursuant to Supreme Court Rule 23 (eff. July 1, 1994)). This court affirmed his convictions and sentences but vacated his conviction on a third charge, aggravated battery with a firearm, on the grounds that it was a lesser-included offense. *Bannister*, No. 5-02-0244, order at 8.

¶ 19 The defendant filed a *pro se* petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2004)). He alleged, in relevant part, that the State "applied a novel construction" to the murder and attempt statutes by omitting "the justifiable use of force statute" and "withholding exculpatory information" from the defense. He further alleged that the State "fraudulently concealed" evidence that Deandre and Revere Coleman were committing an aggravated battery on Wesley Momon prior to the shootings. He explained that this concealment occurred because the "chain of custody" of the wrench was broken when the wrench "was moved from one location to another by persons unknown." The defendant alleged that his right to due process was further violated because (1) the State failed to disclose the fact that the wrench had been moved and (2) the wrench was admitted into evidence in error after the chain of custody was broken. Finally, he alleged that *Brady v. Maryland*, 373 U.S. 83 (1963), was violated by the suppression of exculpatory evidence. Attached to the petition was a police report written by Detective Stephen Schmulbach. A parenthetical statement in the report

indicates that Officer Taylor told Detective Schmulbach that a wrench which was lying on a narrow strip of grass next to the intersection "had initially been in the intersection but person(s) unknown had moved it" before Detectives Schmulbach and Krug arrived to secure the scene.

¶ 20 The court appointed counsel for the defendant. Counsel filed two amended petitions. In relevant part, the second amended petition alleged that the defendant was denied due process of law due to prosecutorial misconduct and that he received ineffective assistance of both trial and appellate counsel. More specifically, the petition alleged the following acts of prosecutorial misconduct: (1) the State failed to disclose that it had knowledge that the defendant was resisting a forcible felony when he shot the Coleman brothers; (2) investigating officers failed to preserve a proper chain of custody for the wrench; (3) the Belleville police department did not test the wrench (presumably for finger prints); and (4) the State withheld evidence that supported the defendant's claim of self-defense, in violation of *Brady*. The petition further alleged that trial counsel was ineffective for failing to locate and interview additional witnesses and that appellate counsel was ineffective for failing to raise these claims in the defendant's direct appeal. We note that the petition raised additional claims of ineffective assistance of counsel that the defendant does not continue to press on appeal.

¶ 21 Postconviction counsel did not attach any affidavits or other documentation to the amended petition. Instead, he alleged that "additional affidavits are not attached *** due to the nature of the points raised."

¶ 22 In support of the allegation that trial counsel failed to locate and interview additional witnesses, counsel pointed to the transcript of a hearing on a motion to continue filed by the defendant before his trial. Trial counsel requested the

continuance to allow him time to attempt to locate additional eyewitnesses to the shooting. At the hearing, counsel told the court that he had been appointed to represent the defendant two months earlier, replacing a previous attorney, and had been unable to locate six witnesses who the defendant had indicated were present at the scene. Counsel explained to the court that locating the witnesses was difficult in part due to the fact that three years had elapsed since the shootings. Some of the witnesses had moved away from the area. The court granted the continuance but told defense counsel, "I'm not going to tell you how to investigate the case, but it would seem to me that you may have to do a little bit more aggressive search *** if you are going to locate people that are spread out in the neighborhood." Postconviction counsel highlighted this statement in support of the claim that trial counsel was ineffective for failing to locate additional witnesses.

¶ 23 The State filed a motion to dismiss the defendant's amended postconviction petition. At a hearing on the motion, the State argued that the claims in the petition could have been raised on direct appeal and were, therefore, waived. The court asked the State to address the defendant's contention that he had received ineffective assistance of appellate counsel, and the State argued that appellate counsel could not be ineffective for failing to raise claims that lacked merit. The State further argued that the allegations that the prosecution withheld evidence that the defendant was resisting a forcible felony were rebutted by the record. This was so, the State argued, because this evidence was actually presented to the jury. The court granted the motion to dismiss. This appeal followed.

¶ 24 The defendant contends that he did not receive effective assistance of postconviction counsel. Because the right to postconviction relief is statutory, not constitutional, claims of ineffective assistance of postconviction counsel are not

governed by the familiar standard of *Strickland v. Washington*, 466 U.S. 668 (1984). Instead, petitioners are entitled to the level of assistance mandated by the Post-Conviction Hearing Act. *People v. McNeal*, 194 Ill. 2d 135, 142, 742 N.E.2d 269, 273 (2000). Our supreme court has held that the Post-Conviction Hearing Act requires a reasonable level of assistance. *McNeal*, 194 Ill. 2d at 142, 742 N.E.2d at 273; *People v. Turner*, 187 Ill. 2d 406, 410, 719 N.E.2d 725, 728 (1999).

¶ 25 To ensure this level of assistance, Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984) imposes three specific obligations on postconviction counsel. *People v. Lander*, 215 Ill. 2d 577, 584, 831 N.E.2d 596, 600 (2005). Counsel must (1) consult with the defendant to ascertain his claims of error, (2) examine the trial court record, and (3) make any amendments to the petition that are necessary to adequately present the defendant's claims to the postconviction court. *Lander*, 215 Ill. 2d at 584, 831 N.E.2d at 600 (citing Ill. S. Ct. R. 651(c) (eff. Dec. 1, 1984)). The duty to amend the petition requires postconviction counsel to "shape[] the petitioner's claims into proper legal form." *People v. Perkins*, 229 Ill. 2d 34, 43-44, 890 N.E.2d 398, 403 (2007). This includes a duty to add any allegations that are essential to the claims the defendant raised in the *pro se* petition. *Turner*, 187 Ill. 2d at 413, 719 N.E.2d at 729. However, it does not include a requirement that counsel take any steps to present claims other than those raised by the defendant himself. *People v. Davis*, 156 Ill. 2d 149, 164, 619 N.E.2d 750, 758 (1993). Similarly, postconviction counsel's duty to examine the record encompasses only a requirement that counsel "examine as much of the [record] as is necessary to adequately present and support those constitutional claims raised by the petitioner." *Davis*, 156 Ill. 2d at 164, 619 N.E.2d at 758.

¶ 26 With these principles in mind, we turn to the defendant's arguments. The defendant contends that postconviction counsel's performance was unreasonable in

two ways. First, he argues that counsel failed to articulate the true significance of the evidence that the wrench had been moved. That is, instead of arguing that the chain of custody had been broken and that the State withheld exculpatory evidence, postconviction counsel should have argued that trial counsel was ineffective for failing to present evidence that the wrench was initially found in the intersection and was then moved to the nearby strip of grass. Next, the defendant contends that postconviction counsel failed to support his claim of ineffective assistance of counsel with the affidavits of the uncalled defense witnesses. We find neither argument persuasive.

¶ 27 The defendant first argues that postconviction counsel failed to articulate the argument that trial counsel was ineffective for his failure to present evidence that the wrench had been found in the intersection and was then moved. The State argues that such a claim is not even arguably included in the arguments raised in the defendant's *pro se* petition and that, therefore, counsel was not required to make it. We note that both the *pro se* petition and counsel's amended petition allege that the prosecution withheld exculpatory evidence. Both also allege that the wrench was moved, although neither petition specifies that this information was the exculpatory evidence at issue. Before the postconviction court, the State responded to this claim by arguing that the police report was tendered to the defense, thereby rebutting the allegation that the prosecutor failed to disclose this information.

¶ 28 We need not determine whether postconviction counsel was required to reshape these arguments into an argument that trial counsel was ineffective for failing to present the evidence that the wrench had been moved because we conclude that such an argument had no merit. Because this issue was not raised on direct appeal, postconviction counsel could only raise the issue by arguing that appellate counsel

was ineffective for failing to argue that trial counsel was ineffective. Claims of ineffective assistance of appellate counsel are governed by the same standards that govern claims of ineffective assistance of trial counsel. In order to prevail, a defendant must show both that counsel's decision not to raise an issue was objectively unreasonable and that counsel's decision prejudiced the defendant. *People v. Childress*, 191 Ill. 2d 168, 175, 730 N.E.2d 32, 36 (2000). Appellate counsel is not ineffective for failing to raise claims that lack merit. *Childress*, 191 Ill. 2d at 175, 730 N.E.2d at 36.

¶ 29 Here, the precise location of the wrench at the crime scene did not become an issue until the prosecution pointed it out during rebuttal arguments. It is unlikely that this line of argument played a significant role in the jury's decision. The jury saw a large diagram of the intersection. This showed that the narrow strip of grass where Detective Krug said the wrench was found was immediately next to the portion of the intersection where the shootings took place. Detective Krug specifically stated that the strip of grass was "very narrow." Thus, jurors saw evidence that the wrench was found near Deandre Coleman's body. In addition, jurors were instructed that closing arguments are not evidence. Given these circumstances, we do not believe appellate counsel could have successfully argued that a different result would have been reasonably probable had trial counsel presented evidence that the wrench had been moved from one spot at the scene to another. As such, the claim would have had no merit had it been raised by postconviction counsel either.

¶ 30 The defendant next argues that counsel's failure to attach affidavits and other documents to the petition defeated both of these claims. We may easily reject this argument as it relates to the issue of the wrench. The police report was attached to the defendant's *pro se* petition, which was already a part of the record. However, this

argument merits further discussion as it relates to the issue of trial counsel's failure to call additional witnesses.

¶ 31 As discussed previously, the amended petition referred to a hearing transcript in the record in support of this claim. At that hearing, the trial judge informed defense counsel that he would need to make more aggressive efforts to locate the witnesses he was looking for. We acknowledge that postconviction counsel's attempt to support this claim solely with a reference to this hearing transcript was not sufficient. Claims that trial counsel was ineffective for failing to call additional witnesses must be supported with affidavits of those witnesses as to the nature of the testimony they could have offered and an explanation of how that testimony would have helped the defendant. *People v. Johnson*, 154 Ill. 2d 227, 240-41, 609 N.E.2d 304, 310 (1993).

¶ 32 We also note that the transcript does not really support the claim. Although the trial judge granted the defendant's motion for a continuance, he expressed frustration at the fact that the trial had already been continued numerous times. At that point, three years had already elapsed since the shootings, although counsel had been appointed to represent the defendant only two months earlier. The admonition to take more aggressive steps to locate potential defense witnesses, viewed in this context, appears to be more an expression of this frustration with the slow progress of the case than a complaint that counsel was not doing his job properly. In addition, the prosecutor told the court that the police had not taken statements from any of these potential witnesses, and both defense counsel and the prosecutor indicated that the eyewitnesses to the shootings were difficult to locate. This seems to rebut the argument that trial counsel was ineffective.

¶ 33 However, the defendant's claim that he did not receive a reasonable level of

postconviction assistance fails for two reasons. First and foremost, as previously discussed, counsel was under no obligation to raise this claim at all. Second, we "may reasonably presume that post[]conviction counsel made a concerted effort to obtain affidavits in support of the post[]conviction claims, but was unable to do so" unless that presumption is rebutted by the record. *Johnson*, 154 Ill. 2d at 241, 609 N.E.2d at 311.

¶ 34 In *Johnson*, the supreme court found that the record rebutted this presumption because it revealed that postconviction counsel "made *no* effort to investigate" the defendant's claims. (Emphasis added.) *Johnson*, 154 Ill. 2d at 241, 609 N.E.2d at 311. At a hearing on a motion to dismiss Johnson's petition, counsel acknowledged that the defendant had asked him to obtain affidavits from three specified witnesses and admitted that he was not able to do so. *Johnson*, 154 Ill. 2d at 242-43, 609 N.E.2d at 311. In an affidavit filed as a supplement to the record on appeal, he stated that he had tried unsuccessfully to contact one of the three witnesses and had made no attempt to contact the other two. *Johnson*, 154 Ill. 2d at 243, 609 N.E.2d at 311.

¶ 35 Here, by contrast, there is no evidence in the record to rebut the presumption that counsel made an effort to obtain affidavits. Indeed, the record shows that trial counsel had difficulty locating these witnesses due, in part, to the passage of time. As previously noted, trial counsel sought a continuance to try to locate the additional witnesses three years after the shootings. By the time postconviction counsel filed his petition in the matter, six years had passed since the shootings, presumably making it even more difficult to locate the eyewitnesses. A reasonable level of assistance does not mean that postconviction counsel must attempt to locate witnesses not identified by the defendant or "engage in a generalized fishing expedition in search

of support for claims raised in a petition." (Internal quotation marks omitted.) *People v. Rials*, 345 Ill. App. 3d 636, 642, 802 N.E.2d 1240, 1245 (2003).

¶ 36 For the foregoing reasons, we conclude that postconviction counsel provided the level of reasonable assistance required under the Act. We therefore affirm the court's order dismissing the defendant's petition.

¶ 37 Affirmed.