

Nos. 1-12-0304, 1-12-0634 (cons.)

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 00CR1729
)	
JAMES JOHNSON,)	The Honorable
)	Neera Lall Walsh,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant made a substantial showing of a constitutional violation on his ineffective assistance of trial counsel claim regarding alibi witnesses. This court reversed and remanded the cause for an evidentiary hearing on that single claim but affirmed the dismissal of the remaining postconviction claims as meritless. This court also affirmed the dismissal of defendant’s section 2-1401 petition because defendant failed to establish his conviction and sentence were void.

¶ 2 Defendant James Johnson appeals *pro se* from the second-stage dismissal of his postconviction petition, which he filed, *pro se*, under the Post-Conviction Hearing Act (Act)

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(725 ILCS 5/122-1 *et seq.* (West 2010)) and also from the simultaneous dismissal of his petition filed, *pro se*, under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)). On appeal, defendant contends that the circuit court erred in dismissing his postconviction petition because he made a substantial showing of a constitutional violation and, thus, is entitled to an evidentiary hearing. He raises a bevy of claims related to the violation of his due process rights and ineffective assistance of trial and appellate counsel. Defendant also contends the circuit court erred in dismissing his section 2-1401 petition on the State's motion because he established that the trial court lacked jurisdiction to correct its guilty verdict from armed robbery to aggravated robbery, and defendant contends his conviction should be vacated as a result. We affirm in part, reverse in part, and remand for an evidentiary hearing under the Act on the single claim of ineffective assistance of trial counsel.

¶ 3

BACKGROUND

¶ 4

A. Bench Trial

¶ 5 Following a 2004 bench trial, defendant was convicted of the December 13, 1999, aggravated robbery of a Payless Shoe Store (Payless) in Chicago and was sentenced to a 30-year prison term, which he is now serving. The cause initially proceeded to trial on an armed robbery charge, and the State presented three witnesses for its case. Payless assistant manager Eugenia Todd testified that she saw defendant three times on December 13, 1999, the first being in the morning when defendant entered the Payless, tried on gym shoes, and then after two to five minutes asked Todd to hold them. The second encounter occurred around 4 p.m., when Todd saw defendant smoking outside the Payless. The third and final encounter, which also lasted several minutes, occurred when defendant thereafter entered the store, apparently feigned

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interest in shoestrings next to the register, then pointed a gun in Todd's face while demanding money. Customers began screaming and leaving the store. Store manager Dolly Applegate testified that she emerged from the back and saw defendant robbing Todd. Defendant told Applegate to get on the floor, she fell to her knees, and defendant threw a can of shoe repellent at her before absconding from the store with approximately \$100-\$200. Police arrived shortly thereafter, and Todd described the perpetrator as an African American male in his late twenties with a medium complexion and distinct scar on his left cheek. He was 5'8" or 5'9", weighed approximately 190-230 pounds, and was wearing a black hooded sweatshirt and black skullcap.

¶ 6 Several days after the robbery, Todd viewed photographs but could not identify the perpetrator of the crime. About two weeks later, defendant was detained for an unrelated matter. Sergeant Weigand testified that when he administered *Miranda* rights to defendant, he noticed defendant bore a large scar on his cheek, which matched the case report description of the Payless robber. As a result, Sergeant Weigand compiled a five-photograph array, which he showed to Todd and Applegate who separately identified defendant. That same day, they also both separately viewed and identified him in a police line-up. Todd immediately identified defendant, and Applegate did so after asking the individuals in the line-up to stand up and turn sideways. Todd also identified defendant at trial. Although several cans were recovered from the floor and only some suitable prints emerged for comparison, none matched defendant's.

¶ 7 After the testimony of Todd and Applegate but before Sergeant Weigand's testimony, the State notified defense counsel that certain photographs of defendant – which the police apparently presented to the victims on December 28, 1999, for identification purposes – were not from the exact date of defendant's arrest, which also occurred on December 28, 1999. The

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State sought to enter the real arrest-day photographs into evidence, but defense counsel objected. Although the State indicated it was unsure when the non-arrest-day photographs entered the system, it noted, but for his clothing, defendant looked the same as the photograph taken from the day of his arrest. Sergeant Wiegand later testified to this, and the court and defense counsel agreed with these observations. The court then sustained defense counsel's objection based on surprise and a lack of prejudice, and the case proceeded. In short, the disputed non-arrest-day photographs were eventually admitted as the State's Exhibit 8. However, none of the photographic exhibits appears in the record on appeal. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (it is appellant's burden to provide a sufficiently complete record on appeal and doubts arising therefrom will be resolved against appellant).

¶ 8 It is also noteworthy that at trial, there was some confusion about the scar on defendant's cheek. Todd testified that from the best of her recollection, the scar was on the left cheek, although she could not say whether it was permanent. Sergeant Weigand testified that he believed the scar was on defendant's right cheek. When asked why the defendant's arrest report indicated "nv," for "none visible," in the box asking whether any scars were present, Sergeant Weigand stated that he did not write the handwritten notation, but rather the arrest report he prepared was typed. Although it is undisputed that Exhibit 8 revealed defendant had a scar on his right cheek, at the time of trial, defendant did not have any scar on his cheek.

¶ 9 Following Sergeant Weigand's testimony, the State rested. Defendant did not present any evidence. The trial court found defendant guilty of armed robbery. In making its determination, the court noted that the testimony of Eugenia Todd was competent and credible. The court found that although Todd believed defendant's scar to be on the left cheek, when it

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was actually on the right, this discrepancy was a common mistake and did not diminish Todd's credibility. Rather, the court found that Todd had ample opportunity to view the defendant three times on the day of the crime, and noted that Todd was able to positively identify defendant in a photo array, a physical line-up, and at trial. The court also did not consider the scientific evidence excluding defendant to be dispositive.

¶ 10 Defense counsel filed a motion for a new trial challenging the sufficiency of the evidence and alternatively arguing that defendant should at least be found guilty of "some kind of lesser offense." The court reiterated that it found Todd's identification of defendant as the robber competent and credible. However, because defendant was detained without a weapon on his person, the court "corrected" its finding of guilty to aggravated robbery, even though that was not a charged offense and not technically set forth in the indictment for armed robbery. Defendant thereby avoided a life sentence as an habitual criminal, and the cause proceeded to sentencing where aggravating and mitigating evidence was presented. Based on defendant's criminal background, the court sentenced defendant to a Class X term of 30 years. Defense counsel filed a motion to reconsider the sentence, which the court denied. The State also filed a motion to reconsider the court's correction of the guilty verdict from armed robbery to aggravated robbery. The State argued that aggravated robbery was not a lesser included offense of armed robbery, and defendant should either be found guilty of armed robbery, as was originally held, or simple robbery. Defense counsel objected, and the court denied the motion, reasoning it was "inappropriate" to reconsider correcting the judgment yet again after finding defendant guilty of aggravated robbery.

¶ 11

B. Direct Appeal

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¶ 12 Defendant filed a direct appeal, arguing that: “(1) the trial court erroneously found defendant guilty of the uncharged offense of aggravated robbery; (2) the evidence was insufficient to sustain a conviction; (3) a photograph of defendant was erroneously admitted in evidence;” and the mittimus should be corrected. *People v. Johnson*, No. 1-05-1051, at 1 (unpublished order under Supreme Court Rule 23). This court refused to apply the plain error standard to the trial court’s finding of guilt on the uncharged offense of aggravated robbery based on the doctrine of invited error, noting that defense counsel asked the trial court to find defendant guilty of a lesser charge, then objected to reconsidering the aggravated robbery finding of guilt, and that defendant benefitted from this judgment. *Id.* at 10. This court also found that the evidence was sufficient to support the conviction, holding that the testimony of Todd and Applegate “was not improbable, unsatisfactory or unreasonable.” *Id.* at 14. Finally, this court held that the admission of People’s Exhibit No. 8 into evidence was proper and that defendant failed to prove defense counsel’s representation prejudiced his case. *Id.* at 18. Thus, this court affirmed defendant’s aggravated robbery conviction, and the Illinois Supreme Court denied defendant’s petition for leave to appeal. See *People v. Johnson*, 231 Ill. 2d 643 (2009).

¶ 13 C. Post-Conviction & Section 2-1401 Petitions

¶ 14 On June 16, 2009, defendant, acting *pro se*, filed his first postconviction petition under the Act. Although the petition was docketed and defendant was appointed counsel, he filed motions to proceed *pro se* and *in forma pauperis*, which the circuit court granted in 2011.

Defendant subsequently filed a rather voluminous superseding *pro se* postconviction petition on June 27, 2011, in which he raised a number of claims relating to the violation of his due process rights, including the suppression of material evidence and State perjury, as well as claims of

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ineffective assistance of trial and appellate counsel. Defendant asserted that his petition established a substantial constitutional violation and that he was therefore entitled to an evidentiary hearing as postconviction relief. Notably, for the purposes of this appeal, defendant asserted his trial counsel was ineffective for failing to investigate or call alibi witnesses at trial. In support, defendant provided multiple documents including trial transcripts and affidavits from himself and the two “alibi” witnesses, his wife, Veronica Ayers, and her friend, Belinda Stubbs. Defendant’s affidavit stated that he told his defense counsel Timothy P. Nance about these alibi witnesses and provided him with their contact information. Defendant stated his wife would have testified that they left her workplace together around 3:30 p.m., then went home and that her coworker Stubbs could corroborate their leave-taking. According to defendant’s affidavit, Nance said he would contact defendant’s wife. Defendant also stated that the bus schedule would not have allowed him to commit the crime. Ayers’ affidavit likewise stated that defendant could not have committed the crime because he was at her job until 3:30 p.m., then the couple went home and remained there until the next morning. Ayers’ affidavit stated that, while no attorney or investigator contacted her regarding her testimony, she herself had contacted Stephen Connolly, defendant’s previous attorney, about defendant’s alibi; Connolly essentially told her he would not call her to testify because she was defendant’s wife and could not be believed. Stubbs’ affidavit corroborated the fact that defendant was at his wife’s job until about 3:30 p.m., and also indicates that no attorney or investigator contacted her about the incident.

¶ 15 About a year before filing the superceding postconviction petition, on August 24, 2010, defendant also filed a *pro se* section 2-1401 petition under the Code. Defendant subsequently filed a superseding *pro se* section 2-1401 petition on June 27, 2011, in which he argued his

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conviction and sentence were void because the trial court's judgment correcting the finding of guilt from armed robbery to aggravated robbery was tantamount to an acquittal and, consequently, the trial court lacked personal and subject matter jurisdiction to find him guilty of aggravated robbery.

¶ 16 On September 26, 2011, the State filed motions to dismiss the respective petitions, which the circuit court granted. Defendant timely filed separate notices of appeal from the dismissals and now challenges them on appeal. This court consolidated the cases as Nos. 12-0304 (postconviction petition) and 12-0634 (2-1401 petition).

¶ 17 ANALYSIS

¶ 18 2-1401 Petition

¶ 19 Defendant, acting *pro se*, first challenges the dismissal of his section 2-1401 petition. Section 2-1401 provides a statutory framework for petitioners to challenge a final order or judgment more than 30 days after its entry. 735 ILCS 5/2-1401 (West 2010); *People v. Pinkonsly*, 207 Ill. 2d 555, 562 (2003). A section 2-1401 petition must be filed not later than two years after the challenged judgment's entry unless there is a clear showing that the petitioner was under legal disability or duress, that the ground for relief was fraudulently concealed, or that the challenged judgment is void. *Pinkonsly*, 207 Ill. 2d at 562; *People v. Harvey*, 196 Ill. 2d 444, 447 (2001).

¶ 20 In this case, defendant filed his section 2-1401 petition in 2011, some seven years after his conviction. Defendant does not now claim legal disability or duress, but only that his conviction and sentence are void. He specifically contends that when the trial court found insufficient evidence to support the armed robbery conviction based on the absence of a

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recovered weapon, this was tantamount to an acquittal of the armed robbery offense and any lesser-included offenses. He argues the trial court therefore lacked jurisdiction to adjudge him guilty of aggravated robbery. The State initially argues this claim is procedurally barred because it was essentially raised on direct appeal. Even procedural bars aside, however, we conclude defendant's claim has no merit.

¶ 21 Determining whether a judgment is void or merely voidable presents a jurisdictional question. *People v. Mescall*, 379 Ill. App. 3d 670, 673 (2008). A void judgment occurs only when the court entering it lacks jurisdiction, *i.e.* (1) personal jurisdiction; (2) subject matter jurisdiction; or (3) the power to render the particular judgment or sentence. *Id.* A voidable judgment, by contrast, is one entered erroneously by a court with jurisdiction, which can be corrected on review only if timely challenged. *Id.* Generally, once a court has acquired jurisdiction, no subsequent error or irregularity will oust the jurisdiction thus acquired; accordingly, a court may not lose jurisdiction because it makes a mistake in determining either the facts, the law, or both. *Id.*

¶ 22 Our *de novo* review of the record (see *People v. Vincent*, 226 Ill. 2d 1, 18 (2007)) reveals that the trial court clearly had the power to correct its finding and render the particular judgment in this case following defendant's motion for a new trial. See *People v. Mink*, 141 Ill. 2d 163, 171 (1990) (a trial court has jurisdiction to reconsider any previously entered orders as long as the case is pending before the court); see also *People v. Jones*, 207 Ill. 2d 122, 137 (2003) (same). The court, when addressing defendant's motion, found insufficient evidence as to whether defendant possessed a dangerous weapon, which is a requirement for armed robbery, but not insufficient evidence as to what defense counsel implicitly conceded was the lesser-

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included offense of aggravated robbery, an offense which merely requires the threat of a weapon. See 720 ILCS 5/18-2, 18-5 (West 1998). Although the charging instrument in this case did not technically lay a foundation for aggravated robbery as a lesser-included offense (see *People v. Jones*, 293 Ill. App. 3d 119, 127-29 (1997)), such an error would not divest the trial court of jurisdiction. See *People v. Hughes*, 2012 IL 112817, ¶¶ 27-28; *People v. Benitez*, 169 Ill. 2d 245, 256 (1996). In short, the record does not support defendant's assertion that the trial court found there was insufficient evidence as to the lesser-included offenses, and the trial court had authority to correct its guilty finding. See *People v. Knaff*, 196 Ill. 2d 460, 470 (2001) (finding that assuming, *arguendo*, the trial court's finding of insufficient evidence amounted to an acquittal of the greater charge, "it does not follow that the defendant was thereby acquitted of the lesser charges"). The court thus had jurisdiction, and defendant's conviction is not void.

¶ 23 We would add that what defendant really appears to be challenging is that the court's correction of the guilty finding violated his double jeopardy rights. However, even an error of constitutional magnitude does not necessarily strip the court of jurisdiction or render a judgment void. See *Mescall*, 379 Ill. App. 3d at 674. Defendant's claim must fail.

¶ 24 Post-Conviction Petition

¶ 25 Defendant next challenges the dismissal, on the State's motion, of his postconviction petition at the second stage of proceedings under the Act, a matter which we review *de novo*. See *People v. Shum*, 207 Ill. 2d 47, 57 (2003); *People v. Coleman*, 183 Ill. 2d 366, 388-89 (1998). The Act serves as a vehicle for inmates to collaterally challenge their convictions and sentences by showing they resulted from a substantial deprivation of a constitutional right. 725 ILCS 5/122-1 (West 2010); *People v. Harris*, 206 Ill. 2d 1, 12 (2002). At the second stage, the

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defendant bears the burden of making a substantial showing of a constitutional violation to warrant an evidentiary hearing. *People v. Domagala*, 2013 IL 113688, ¶ 35. A postconviction petitioner is not entitled to an evidentiary hearing as a matter of right, but must set forth well-pleaded factual allegations in the petition, supported by the record and accompanying affidavits where appropriate, to establish a constitutional violation; factual allegations that are not positively rebutted by the record are accepted as true. *Harris*, 206 Ill. 2d at 13. Nonspecific and nonfactual assertions merely amounting to conclusions are insufficient to necessitate an evidentiary hearing under the Act. *People v. Hall*, 217 Ill. 2d 324, 334 (2005); *People v. Hobson*, 386 Ill. App. 3d 221, 231 (2008).

¶ 26 Defendant now raises various arguments in support of his claim that he was entitled to an evidentiary hearing, namely, ineffective assistance of trial and appellate counsel, as well as due process violations, including State perjury and suppression of evidence. We consider each contention in turn.

¶ 27 Defendant first contends he was deprived of his sixth amendment right to effective assistance of trial and appellate counsel. A successful ineffective assistance of counsel claim must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984), wherein a defendant must show: (1) deficient counsel whose conduct dipped below the objective standard of reasonableness and (2) prejudice to the defendant as a result. *People v. Hodges*, 234 Ill. 2d 1, 17 (2009). Thus, even if representation was unreasonable under *Strickland*, a defendant still must establish prejudice, *i.e.* there is a reasonable probability that the outcome of the trial would have been different but for counsel's deficient performance. *Harris*, 206 Ill. 2d at 16. If defendant cannot satisfy one prong, then a reviewing court need not address

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the other. *People v. Irvine*, 379 Ill. App. 3d 116, 130 (2008).

¶ 28 Defendant specifically contends his postconviction petition raised a substantial constitutional violation that trial counsel Timothy P. Nance was ineffective for failing to investigate and call two alibi witnesses at trial. As stated, defendant attached to his petition the affidavits of these potential witnesses, his wife, Ayers, and her friend, Stubbs, wherein they stated defendant was at their workplace until 3:30 p.m.; Ayers stated that she and defendant then left and returned home, remaining there until the next morning. Defendant's own affidavit corroborated these statements and further asserted that the bus schedule would not have permitted him to commit the crime.

¶ 29 Generally, counsel's decision whether to call a witness is a matter of trial strategy, and there is a strong presumption that it is a product of sound trial strategy, rather than incompetence. *People v. English*, 403 Ill. App. 3d 121, 138 (2010). Nonetheless, "an attorney cannot be found to have made decisions based on valid trial strategy where he or she fails to conduct a *reasonable* investigation, fails to interview witnesses, and fails to subpoena witnesses." *Irvine*, 379 Ill. App. 3d at 130. In other words, trial counsel may be ineffective for failing to present exculpatory evidence of which he is aware, which includes failing to call witnesses whose testimony would support an otherwise uncorroborated defense. *People v. Makiel*, 358 Ill. App. 3d 102, 107-08 (2005); *People v. King*, 316 Ill. App. 3d 901, 913 (2000). When determining whether defense counsel was ineffective for failure to investigate, the value of the evidence that was not presented at trial and the closeness of the evidence that was presented are weighed. *Makiel*, 358 Ill. App. 3d at 107.

¶ 30 Here, in ruling on defendant's petition, the circuit court rejected defendant's ineffective

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assistance claim, stating defense counsel's decision not to call the witnesses was "reasonable *** trial strategy." In support, the court cited Ayers' affidavit, which stated she told defendant's first attorney, Connolly, of the alibi, but he declined to call Ayers at trial because she was not credible as defendant's spouse. Defendant, in his brief, now notes that his postconviction claim of ineffective assistance, supported by his own affidavit, referenced the only trial attorney he had, which was Nance. While Connolly represented defendant during discovery, he withdrew four years before defendant's trial. The State, in its response, would have us presume that Connolly communicated the strategy at issue to Nance by forwarding the trial records to him, but the record simply does not support such a conclusion.

¶ 31 Rather, we are left with defendant's unrefuted assertions, which we take as true, that he communicated the alibi defense to his trial attorney Nance, and provided him with the alibi witnesses' contact information, yet they were not called at trial. Balancing defendant's assertions against the trial evidence, on this record we cannot say defense counsel was *not* ineffective for failing to call the alibi witnesses. While the State's evidence in this case certainly was substantial, it rested solely on the identification testimony of two eyewitnesses, there was no circumstantial evidence to support defendant's conviction, and no evidence from the defense to contradict the State's case. Had Nance in fact been informed of the alibi witnesses, and assuming, as we must, that they were competent to testify, their testimony could have affected the outcome of trial, which would have come down to a credibility contest between the State and defense witnesses. See *Domagala*, 2013 IL 113688, ¶ 35 (the relevant inquiry is whether there is a substantial showing of a constitutional violation based on the well-pleaded allegations in the petition, "*which if proven* at an evidentiary hearing, would entitle the petitioner to relief").

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Defendant also identified the bus schedule to support his alibi and stated in his own affidavit that a Pace employee would testify it was the same as in 1999.

¶ 32 In short, the pleading, affidavits, and record raise unanswered issues of fact regarding whether Nance investigated the alibi witnesses and made a strategic decision not to call them, not resulting in deficiency. Defendant is thus entitled to an evidentiary hearing on that point, for it is the only proper place to resolve the truth or falsity of such issues. See *People v. Jones*, 399 Ill. App. 3d 341, 357 (2010); *People v. Cabrera*, 326 Ill. App. 3d 555, 564-65 (2001). Once evidence is heard, the circuit court will be in a better position to determine if defense counsel was deficient. *Cabrera*, 326 Ill. App. 3d at 565. This conclusion is not to say the record disclosed any other deficiencies in Nance's representation, for he argued competently on defendant's behalf, cross-examined the witnesses, and aided defendant in avoiding a life sentence.

¶ 33 We note, additionally, that defendant also argues appellate counsel was ineffective for failing to raise this issue on direct appeal. However, because defendant's ineffective assistance of counsel claim regarding the alibi witnesses relied on matters outside the trial record, there was no reasonable way direct appeal counsel could have effectively argued the claim.

¶ 34 Although we reverse the circuit court's dismissal regarding the above-stated claim of ineffective assistance of trial counsel and remand the matter for an evidentiary hearing, as set forth below, we affirm the court's dismissal of the remaining ineffective assistance of counsel claims and the remaining claims on appeal. See *People v. Lara*, 317 Ill. App. 3d 905, 908 (2000) (allowing a partial dismissal at the second stage); see also *People v. Cleveland*, 2012 IL App (1st) 101631, ¶ 55 (citing *Lara* for same). Because the following claims lack underlying merit, we

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cannot fault direct appeal counsel for failing to raise them as defendant would have us do. See *People v. Childress*, 191 Ill. 2d 168, 175 (2000).

¶ 35 Defendant next contends that trial counsel was constitutionally ineffective when he declined to recall Todd and Applegate following the State's disclosure that Exhibit 8 was a photograph that did not represent defendant on the actual day of his arrest. Although defendant's brief on this point is not entirely clear, he appears to argue that had defense counsel recalled the State's witnesses, Exhibit 8 would not have been admitted and the outcome of trial would have been different. As the trial record makes clear, there was no demonstrable difference regarding how defendant appeared in the photograph from the day of his arrest and the non-arrest-day photograph, which the witnesses had apparently already identified and was represented as Exhibit 8. There was no apparent reason to recall them, and defendant has not established the requisite prejudice under *Strickland*.

¶ 36 Defendant also raises various due process claims. To name a few, defendant argues the trial court failed to consider the absence of his fingerprints on the recovered spray cans as exculpatory and relied, instead, on facts outside the trial evidence at the State's erroneous urging; Exhibit 8 was improperly admitted; and the trial court relied its own knowledge to resolve the discrepant testimony regarding the location of the scar. Defendant also contends the State and its witnesses committed perjury and the State suppressed material evidence, further violating his right to due process.

¶ 37 While procedural due process governs the procedures employed to deny a person's life, liberty or property interest, substantive due process limits the State's ability to act, irrespective of the procedural protections provided. *People v. Cardona*, 2013 IL 114076, ¶ 17. The record

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rebutts the conclusive and factually misguided arguments defendant raises regarding due process violations. He has not established that his trial was fundamentally unfair or that he was denied notice and the opportunity to be heard. The record demonstrates that the trial court relied on reasonable inferences from the evidence in reconciling the trial inconsistencies, and the facts defendant cites do not establish the trial witnesses lied, much less that the prosecutor knew of any perjured testimony or exculpatory evidence. Inconsistent testimony does not amount to proof of perjured testimony. See *People v. Lamon*, 346 Ill. App. 3d 1082, 1094 (2004). We find defendant's arguments are really his attempt to rehash the sufficiency of the evidence, which was already addressed on direct appeal. While defendant strives to disguise his arguments under the veil of due process, it is well settled that a postconviction petitioner is not entitled to relief under the Act by merely "rephrasing previously addressed issues in constitutional terms," as waiver and *res judicata* bar these claims. *People v. Flores*, 153 Ill. 2d 264, 277-78 (1992). For the same reasons, we also reject defendant's claim that the State committed a *Brady* violation *vis a vis* Exhibit 8. See *Brady v. Maryland*, 373 U.S. 83 (1963).

¶ 38 Defendant lastly argues that the initial complaint violated section 111-3 of the Code of Criminal Procedure (725 ILCS 5/111-3 (West 2012)), as well as his due process rights, because Detective Wiegand signed it rather than the complainant, Todd. The State, however, proceeded by indictment, not complaint. See 725 ILCS 5/111-1, 111-2 (West 2012)). Defendant's claim is therefore unfounded, and even assuming it were legitimate, he waived it by not addressing the stated deficiencies at trial. See *People v. Wydra*, 265 Ill. App. 3d 597, 609 (1994).

¶ 39 We also finally note that, to the extent this order does not address certain arguments in detail, it is because they are either nonsensical or underdeveloped. An appellant must present

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clearly defined issues to the court, supported by relevant authority; this court is not simply a repository in which appellants may dump the burden of argument and research. See *People v. Robinson*, 2013 IL App (2d) 120087, ¶ 15.

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, dismissing defendant's section 2-1401 petition, we remand the issue of ineffective assistance of trial counsel regarding failure to call two alibi witnesses for an evidentiary hearing under the Act, and we affirm the circuit court's judgment dismissing the remaining claims in defendant's postconviction petition.

¶ 42 No. 1-12-0304, affirmed in part; reversed and remanded in part.

¶ 43 No. 1-12-0634, affirmed.