



23).

¶ 3 Pursuant to the Post-Conviction Hearing Act (720 ILCS 5/122-1 *et seq.* (West 2006)), Gill thereafter initiated the instant postconviction proceeding by filing a petition contending that: (1) his appellate counsel provided ineffective assistance by failing to raise on appeal issues involving the lack of probable cause for defendant's arrest; and (2) his due process rights were violated because he was not notified the State would seek to convict him based on an accountability theory. The State responded by filing a motion to dismiss the petition. The circuit court dismissed Gill's postconviction petition in its entirety. Gill now appeals, and for the following reasons we affirm.

¶ 4 **BACKGROUND**

¶ 5 On June 17, 2000, at approximately 10:30 p.m., Frederick Funes (Funes) and Jamal Moore (Moore) were driving near the intersection of West Estes Avenue and North Glenwood Avenue when two African-American males charged after the van and opened fire. Moore was struck in the back of his head with one bullet. Funes drove from the scene of the shooting to St. Francis Hospital. On June 18, 2000, Moore died as a result of the gunshot wound. Gill and codefendant Gasi Pitter (Pitter) were subsequently arrested and charged with six counts of first degree murder, two counts of attempted first degree murder, and three counts of aggravated discharge of a firearm.

¶ 6 This court's prior order in Gill's direct appeal recounts the disposition of the pretrial proceedings:

"Prior to trial, Gill filed a motion to quash arrest and suppress evidence and a motion to suppress evidence. Gill claimed that his statements to police on June 18, 2000, were taken after he had requested an attorney, in violation of the

protections of the fifth and fourteenth amendments. Gill also argued that the arresting officers did not have probable cause to arrest him and, as such, requested that the court quash his arrest and suppress the evidentiary fruits of his improper arrest.

Gill testified at the hearing on his motions. Gill stated that he voluntarily went to the police station at around 8:30 p.m. on June 18, 2000, with codefendant, codefendant's father, a friend of codefendant's father, and codefendant's girlfriend Nadia Holness. Gill stated that they went to the police station because Greg Pitter, codefendant's older brother, was in custody. Gill claimed that nobody in the party knew that he was being held in connection with the murder of Jamal Moore.

Gill testified that on that night at the police station, the police asked to interview him. The police put him in a room with a bench and he was not allowed to leave this room for four days. He claimed that he was not allowed to call his attorney, though he was allowed to call his mother. This, Gill testified, was on Thursday, after he was placed in a lineup. Gill also claimed that he was never read his Miranda rights.

On cross-examination, Gill testified that his nickname is "Legend" and that codefendant's nickname is "Junior." He claimed that while in police custody from Sunday night until Friday morning he was only given one sandwich to eat, one soda to drink, and was allowed to use the washroom only once. Gill claimed that he was placed in a lineup on Thursday, June 22, 2000. Gill testified that he was finally told the next day at the Cook County Jail [sic] that, not only was he a

suspect in the murder of the victim, but that he was under arrest for the same.

In response, the State offered the testimony of Detective Nick Rossi of the Chicago police department. Rossi testified that he was assigned to investigate the shooting the night of June 17, 2000. Rossi reported to the scene around 11 p.m. Rossi learned from an eye witness [*sic*] that two young, black males wearing dark clothing had run behind and alongside a van and opened fire on the van. Rossi next went to St. Francis Hospital to check on the status of the victim.

Rossi explained that two other officers had arrived at the hospital before him and talked with Funes and Carter. These officers reported that Funes was highly emotional and Carter had interpreted Funes' identification of the shooters as Jamaicans, specifically "Dred" and "Junior," or Greg and Gasi Pitter, Jr. Rossi stated that he and his partner talked with Funes briefly at this time, but, as noted, he was very emotional and Carter was speaking for him. Rossi testified that he believed that Funes was using "Dred" as a way of identifying who the shooters were, not specifically identifying "Dred" as a shooter.

Carter also informed the police where Greg Pitter lived and they went to his apartment, discovering narcotics and placing Greg Pitter under arrest. Rossi testified that he returned to duty the evening of June 18, 2000, and learned that during the day, Carter stated to investigators that Funes said two females, one named Tammy, were on the street at the time of the shooting. These two witnesses were subsequently identified as Tamara Adams and Michelle Clark. In addition, Greg Pitter's girlfriend, Shellia Nicholas, had come to the police station and was interviewed. Greg Pitter claimed that he was with his girlfriend watching

television all night and Nicholas corroborated this. Further, after Greg Pitter was arrested, Nicholas told the police that she had called Holness and learned that codefendant arrived home between 11 and 11:30 p.m. on June 17, 2000. Finally, Nicholas noted that Junior and Legend were always hanging out together.

Later that evening, when Gill, codefendant, and the others came to the police station, Rossi and his partner interviewed Holness. After beginning [sic] an alibi for codefendant, Rossi informed Holness of the seriousness of the incident and the importance of her statements. Holness restarted and told Rossi that she had planned to go to a show with codefendant the night of the incident, but codefendant was out all night. Holness stated that co-defendant [sic] appeared at her home sometime after 11 p.m. with "Legend." She further noted that the two men were evasive about what they were doing that night.

Rossi testified that because they knew that "Legend" was Gill's nickname, the police asked to interview codefendant and then Gill. Gill agreed to be interviewed. Rossi testified that he advised Gill of his Miranda rights from memory. Gill then proceeded to claim that he was with codefendant all night on June 17, 2000, and that he had no knowledge of any shooting.

On June 19, 2000, Gill was allowed to call his mother in the early evening. At 8 p.m., Gill was placed in a lineup. Gill was identified as one of the shooters by both Funes and Adams. Rossi informed Gill that he had been identified as such and was placed under arrest at 8:20 p.m. At 7:30 a.m. on June 20, 2000, Gill was placed in lockup. Rossi further testified that on June 21, 2000, another witness, Michelle Clark, was interviewed. An assistant state's attorney [sic] was

summoned on June 22, 2000, who approved the charges against Gill. Rossi testified that Gill was officially charged on June 22, 2000, and transported to the Cook County Jail on June 23, 2000.

The trial court denied Gill's pretrial motions. After recapping the many inconsistencies in Gill's testimony, the court specifically found that his testimony was confused and lacked credibility. Further, based on the interviews of the witnesses by the police prior to the detention of Gill, the court held that it was clear the police had probable cause to detain Gill." *Gill*, No. 1-04-0019, slip op. at 2-5 (unpublished order under Supreme Court Rule 23).

¶ 7 For the purposes of this appeal, we also observe Detective Rossi testified the police first questioned Holness, then placed Gill in an interview room while they questioned codefendant.

¶ 8 The matter proceeded to a jury trial in April 2002. The trial proceedings and the evidence presented at trial were fully set out in our prior order, and need not be fully restated here. See *Gill*, No. 1-04-0019, slip op. at 5-12 (unpublished order under Supreme Court Rule 23). It is sufficient to note Funes testified he and Moore were riding in Funes' van, observed both Gill and Pitter fire weapons at the van, and subsequently observed Moore had a bullet hole in the back of his head. Funes also testified he mentioned the nickname "Dred" to the police to identify the shooters as part of a group. Funes further testified he knew Gill and codefendant frequently accompanied Greg Pitter, and knew Carter could identify them from the nickname.

¶ 9 An assistant Cook County medical examiner testified Moore died from a gunshot wound to the head. Adams testified she heard gunshots and observed fire from Gill's hand, but did not observe a weapon in his hand. Adams previously stated Gill was the shooter and identified Gill and Pitter in a police lineup as the men involved in the shooting. Clark testified she observed

Gill with a silver handgun in his hand, but did not observe him fire the weapon. Detective Rossi's testimony was substantially consistent with his testimony at the suppression hearing. Gill testified on his own behalf and denied involvement in the shooting.

¶ 10 During the jury instruction conference, the State dismissed the charges of attempted first degree murder and aggravated discharge of a firearm by means of *nolle prosequi*. Following closing arguments, the jury deliberated and found Gill guilty of first degree murder, and specifically found he discharged the firearm that killed Moore. The circuit court subsequently denied Gill's posttrial motion for a new trial and sentenced Gill to 40 years' imprisonment for first degree murder, with an additional 25 years' imprisonment for personally discharging the firearm that killed Moore.

¶ 11 Gill then filed a direct appeal from his conviction, in which he argued: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) ineffective assistance of trial counsel; (3) the trial judge prevented Gill from testifying fully about why he informed the police he had been with Pitter on the night of the shooting; (4) the State made improper closing arguments; and (5) the enhancement of his sentence was unconstitutional. As previously noted, on May 11, 2006, this court affirmed Gill's conviction. *Gill*, No. 1-04-0019, slip op. at 35 (unpublished order under Supreme Court Rule 23).

¶ 12 On December 14, 2006, Gill filed a *pro se* petition for postconviction relief, alleging ineffective assistance of appellate counsel based on the failure to argue the circuit court erred in denying the pretrial motion to quash arrest and suppress evidence. On January 2, 2007, Gill filed a supplemental *pro se* petition for postconviction relief, alleging he was denied due process because Funes and agents of the State coerced Adams to commit perjury at Gill's trial. Gill supported the supplemental petition with an affidavit from his mother. On February 28, 2008,

Gill filed an amended *pro se* petition for postconviction relief, renewing his claim of ineffective assistance of appellate counsel. Gill alleged he was held in a police interview commencing at 8:30 p.m. on June 18, 2000, and not interviewed until 1:15 a.m. on June 19, 2000. Gill also claimed he was not charged under a theory of accountability, thereby denying him adequate notice related to his alibi defense.

¶ 13 On June 2, 2011<sup>1</sup>, Gill's appointed counsel filed a certificate pursuant to Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984), stating she reviewed the trial record, the file prepared by Gill's trial counsel and the appellate briefs, had an investigator interview Gill's mother, and determined Gill's petitions adequately set forth his contentions. On June 8, 2011, defendant filed a motion to proceed *pro se*. On June 23, 2011, the circuit court granted Gill's motion to proceed *pro se*. On August 23, 2011, the circuit court granted Gill leave to file an amended postconviction petition, which alleged: (1) ineffective assistance of appellate counsel based on the failure to challenge the denial of the motion to quash arrest and suppress evidence; and (2) denial of due process where Gill was not charged under an accountability theory. On October 11, 2011, the State filed a motion to dismiss Gill's amended postconviction petition, arguing Gill failed to establish a substantial showing of a constitutional violation on either issue. The State argued the trial court had properly denied Gill's motion to quash arrest and suppress evidence.

¶ 14 On January 19, 2012, the circuit court entered a memorandum order denying Gill's amended postconviction petition. The circuit court ruled Gill's appellate counsel was not patently erroneous in not challenging the denial of the motion to quash arrest and suppress

---

<sup>1</sup> The half-sheet in the record on appeal indicates that a public defender was involved in these proceedings no later than March 18, 2010, and the investigation of the ineffective assistance of counsel claim was ongoing as of September 16, 2010.

evidence in Gill's direct appeal. The circuit court also concluded Gill's indictment was not void, ruling due process did not require the indictment specify whether the State intends to prove a defendant guilty as a principal or as an accessory. The circuit court further observed the appellate court had noted in Gill's direct appeal that the evidence overwhelmingly established Gill had fired the gun. Moreover, the issue regarding the indictment was not raised in Gill's direct appeal.

¶ 15 On February 3, 2012, Gill filed a motion to reconsider the dismissal of his amended postconviction petition. On March 6, 2012, the circuit court denied Gill's motion for reconsideration. Later on March 6, 2012, Gill filed a timely notice of appeal to this court.

¶ 16 ANALYSIS

¶ 17 On appeal, Gill argues the circuit court erred in dismissing his amended postconviction petition. As noted above, defendant filed the instant petition pursuant to the Post-Conviction Hearing Act. 720 ILCS 5/122-1 *et seq.* (West 2006). Our supreme court has summarized the procedures to be employed in evaluating such a petition as follows:

"The Post-Conviction Hearing Act \*\*\* provides a method by which persons under criminal sentence in this state can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution or both. [Citations.] A postconviction action is not an appeal from the judgment of conviction, but is a collateral attack on the trial court proceedings. \*\*\*

In a noncapital case, a postconviction proceeding contains three stages. At the first stage, the circuit court must independently review the petition, taking the allegations as true, and determine whether “ ‘the petition is frivolous or is patently

without merit.’ “ [Citation.] A petition may be summarily dismissed as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact. [Citation.] \*\*\*

If the circuit court does not dismiss the petition as ‘frivolous or \*\*\* patently without merit’ [citation], the petition advances to the second stage, where counsel may be appointed to an indigent defendant [citation], and where the State, as respondent, enters the litigation [citation]. It is at this point, not the first stage, where the postconviction petition can be said to be at issue, with both sides engaged and represented by counsel. [Citation.] At this second stage, the circuit court must determine whether the petition and any accompanying documentation make ‘a substantial showing of a constitutional violation.’ [Citation]. If no such showing is made, the petition is dismissed. [Citation]. If, however, a substantial showing of a constitutional violation is set forth, the petition is advanced to the third stage, where the circuit court conducts an evidentiary hearing. [Citations].”

*People v. Tate*, 2012 IL 112214, ¶¶ 8-10.

¶ 18 In this case, the circuit court appointed counsel to represent Gill, who subsequently filed a certificate pursuant to Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984). The State later filed a motion to dismiss Gill's amended postconviction petition. The record thus establishes the circuit court dismissed the petition at the second stage of proceedings. "At the second stage of postconviction proceedings, the State may file a motion to dismiss the petition and the postconviction court must determine whether the petition and any accompanying documents make a substantial showing of a constitutional violation." *People v. Graham*, 2012 IL App (1st) 102351, ¶ 31. At this stage, "[t]he postconviction court takes 'all well-pleaded facts that are not

positively rebutted by the trial record' as true." *Id.* (quoting *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006)). During the second stage of a postconviction proceeding, however, the defendant bears the burden of making a substantial showing of a constitutional violation. *Pendleton*, 223 Ill. 2d at 473. The dismissal of a postconviction petition at the second stage is reviewed *de novo* (*Graham*, 2012 IL App (1st) 102351, ¶ 31), and "[w]e may affirm the dismissal of a postconviction petition on any basis supported by the record." *People v. Minniefield*, 2014 IL App (1st) 130535, ¶ 93 (quoting *People v. Rivera*, 2014 IL App (2d) 120884, ¶ 8).

¶ 19 Ineffective Assistance of Counsel

¶ 20 Gill's primary contention on appeal is that he received ineffective assistance of appellate counsel based on a failure to challenge the denial of Gill's motion to quash arrest and suppress evidence. "To establish that appellate counsel was ineffective, defendant must satisfy the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 685-87 (1984), and adopted by [our supreme] court in *People v. Albanese*, 104 Ill. 2d 504 (1984)." *People v. English*, 2013 IL 112890, ¶ 33. "Under that standard, a defendant must show both that appellate counsel's performance was deficient and that, but for counsel's errors, there is a reasonable probability that the appeal would have been successful." *Id.* "Appellate counsel is not obligated to raise 'every conceivable issue on appeal,' but rather is expected to 'exercise professional judgment to select from the many potential claims of error that might be asserted on appeal.'" *Id.* (citing *People v. Williams*, 209 Ill. 2d 227, 243 (2004)). "Appellate counsel is not required to brief every conceivable issue on appeal, and counsel is not incompetent for choosing not to raise meritless issues." *People v. Maclin*, 2014 IL App (1st) 110342, ¶ 32 (citing *People v. Easley*, 192 Ill. 2d 307, 329 (2000)). "Accordingly, unless the underlying issue has merit, there is no prejudice from appellate counsel's failure to raise an issue on appeal." *People v. Lacy*, 407 Ill. App. 3d 442, 457

(2011).

¶ 21 Indeed, when considering a claim of ineffective assistance, a court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Strickland*, 466 U.S. at 687; see *People v. Edwards*, 195 Ill. 2d 142, 163 (2001). If a reviewing court finds that the defendant did not suffer prejudice, it need not decide whether counsel's performance was constitutionally deficient. *People v. Buss*, 187 Ill. 2d 144, 213 (1999). Our supreme court has held that "*Strickland* requires actual prejudice be shown, not mere speculation as to prejudice." *People v. Bew*, 228 Ill. 2d 122, 135 (2008). A defendant has the burden of establishing any such prejudice. *People v. Glenn*, 363 Ill. App. 3d 170, 173 (2006). "To establish the prejudice prong of *Strickland* in the context of a motion to [quash arrest or] suppress [evidence], a defendant must show that a reasonable probability exists both that the motion would have been granted and that the outcome of the trial would have been different had the evidence been suppressed." *People v. Lundy*, 334 Ill. App. 3d 819, 830 (2002) (quoting *People v. Nunez*, 325 Ill. App. 3d 35, 42 (2001)). Absent this showing, a defendant cannot show ineffective assistance of appellate counsel. See *Lacy*, 407 Ill. App. 3d at 457.

¶ 22 As previously noted, the defendant bears the burden of making a substantial showing of a constitutional violation at the second stage of postconviction proceedings. *Pendleton*, 223 Ill. 2d at 473. Thus, at this stage of the proceedings, defendant had the burden of making a substantial showing that a reasonable probability exists that the outcome of the proceedings would have been different had his counsel's performance been different. See, e.g., *People v. Harris*, 206 Ill. 2d 293, 307 (2002) (affirming the trial court's dismissal of ineffective assistance of counsel claim without an evidentiary hearing where the defendant failed to make a substantial showing of

prejudice).

¶ 23 In this case, Gill asserts that his appellate counsel was ineffective for failing to raise the issue of the circuit court's denial of his motion to quash, because the police lacked sufficient probable cause to place defendant under arrest. For the reasons discussed above, our resolution of this issue requires a consideration of the underlying merits of Gill's motion to quash his arrest, and whether Gill established a reasonable probability that a challenge to the denial of that motion would have been successful on direct appeal. Based on the following analysis of those questions, we conclude the trial court did not err in denying the motion to quash an arrest and suppress evidence. Thus, Gill cannot demonstrate he was prejudiced by appellate counsel's failure to raise the issue in his direct appeal, and his claim necessarily fails.

¶ 24 The ruling of the circuit court on a motion to quash an arrest and suppress evidence frequently presents mixed questions of fact and law. *People v. Lee*, 214 Ill. 2d 476, 483 (2005). The circuit court's findings of historical fact will be upheld on review unless they are against the manifest weight of the evidence, but the ultimate question of whether to quash and suppress is reviewed *de novo*. *Id.* at 483-84. In ruling on a motion to quash or suppress, it is the circuit court's role to determine the credibility of witnesses and the weight to be given their testimony. *People v. Sutton*, 260 Ill. App. 3d 949, 956 (1994).

¶ 25 A warrantless arrest will be deemed lawful only when probable cause to arrest has been proven. See *People v. Jackson*, 232 Ill. 2d 246, 274-75 (2009). Probable cause exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the person arrested has committed a crime. *Id.* at 275. The existence of probable cause to arrest depends upon the totality of the circumstances at the time of the arrest. *Id.* As our supreme court has stressed:

" ' "In dealing with probable cause, \*\*\* we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." ' [Citations.] Thus, whether probable cause exists is governed by commonsense considerations, and the calculation concerns the probability of criminal activity, rather than proof beyond a reasonable doubt. [Citation.] 'Indeed, probable cause does not even demand a showing that the belief that the suspect has committed a crime be more likely true than false.' [Citation.]" *Id.*

Finally, we note that "[i]n determining whether the trial court correctly found probable cause to arrest the accused, a reviewing court is not limited to the evidence presented at the circuit court's pretrial suppression hearing, but may also consider evidence that was offered at the defendant's trial." *People v. Sims*, 167 Ill. 2d 483, 500 (1995). Indeed, a reviewing court may affirm a circuit court's ruling on a motion to quash arrest and suppress evidence "on any basis appearing in the record, whether or not the [circuit] court relied on that basis or its reasoning was correct[.]" *People v. Daniel*, 2013 IL App (1st) 111876, ¶ 37 (considering whether an investigative stop was converted into an arrest).

¶ 26 Gill argues the police arrested him when they placed him in a locked interview room and had no information identifying him as a shooter under either his proper name or his nickname, "Legend." The accepted test for whether a person should be deemed "arrested" for purposes of the fourth amendment is whether a reasonable person in the defendant's shoes would have believed himself arrested. *E.g., People v. Walls*, 220 Ill. App. 3d 564, 578 (1991). The test for determining whether a defendant is under arrest is deliberately imprecise because it focuses on the coercive effective of police conduct in its entirety, not on each particular detail. *People v.*

*Stofer*, 180 Ill. App. 3d 158, 166 (1989). While no one factor is dispositive in determining whether an arrest has occurred, we may consider factors, including: "(1) the time, place, length, mood, and mode of the encounter between the defendant and the police; (2) the number of police officers present; (3) any indicia of formal arrest or restraint, such as the use of handcuffs or drawing of guns; (4) the intention of the officers; (5) the subjective belief or understanding of the defendant; (6) whether the defendant was told he could refuse to accompany the police; (7) whether the defendant was transported in a police car; (8) whether the defendant was told he was free to leave; (9) whether the defendant was told he was under arrest; and (10) the language used by officers." *People v. Gomez*, 2011 IL App (1st) 092185, ¶ 59. The test for determining whether an individual was under arrest "is objective and it is irrelevant whether the defendant believed he was under arrest or whether the police intended to detain the defendant against his will, unless that intent was conveyed to the defendant." *People v. Buie*, 238 Ill. App. 3d 260, 267 (1992).

¶ 27 Generally, " 'where a defendant voluntarily accompanies an officer to the police station, there is no formal declaration of arrest, and the defendant is not searched, handcuffed, fingerprinted, or photographed, the defendant is neither seized nor under arrest.' " *People v. Anderson*, 395 Ill. App. 3d 241, 249 (2009) (quoting *People v. Sturgess*, 364 Ill. App. 3d 107, 113 (2006)). The act of reading defendant his *Miranda* rights does not of itself provide conclusive evidence that a defendant was improperly detained. See *People v. Davis*, 236 Ill. App. 3d 233, 241-42 (1992) (discussing *People v. Lucas*, 132 Ill. 2d 399, 419 (1989)). The mere fact that questioning occurs in a police station is not, in and of itself, sufficient to convert the questioning into an arrest. *People v. Bell*, 233 Ill. App. 3d 40, 47 (1992). Moreover, a situation where a defendant was aware he was one of several people being questioned by police militates

against a finding that an arrest has occurred. See *Walls*, 220 Ill. App. 3d at 578. A finding that a defendant was not initially under arrest is not the end of the inquiry, however, as an initially legal questioning may become an illegal detention with the passage of time. See *Walls*, 220 Ill. App. 3d at 578. In reviewing the circumstances of the present case, we will consider as true the testimony of Detective Rossi, except where Gill's testimony was un rebutted, so as not to substitute our judgment for that of the trial court on issues of credibility. *People v. Young*, 206 Ill. App. 3d 789, 800 (1990).

¶ 28 The record in this case establishes that the police had reason to believe two African-American males were involved in the shooting. Carter had interpreted Funes' identification of the shooters for the police. Carter had identified the shooters as Jamaicans, specifically "Dred" and "Junior," or Greg and Gasi Pitter, Jr. Detective Rossi testified that he believed that Funes was using "Dred" as a way of identifying who the shooters were, not specifically identifying "Dred" as a shooter. At trial, Funes corroborated Detective Rossi's understanding. The police arrested Greg Pitter, who claimed that he was with his girlfriend watching television all night. Nicholas, Greg Pitter's girlfriend, corroborated this alibi and told the police that she had called codefendant's girlfriend, Holness, and learned that codefendant arrived home between 11 and 11:30 p.m. on June 17, 2000. Nicholas also noted that "Junior" and "Legend" were always together.

¶ 29 Gill arrived at the police station at 8:30 p.m. on June 18. The police first questioned Holness, who told Rossi that she had planned to go to a show with codefendant the night of the incident, but codefendant was out all night. Holness told the police codefendant appeared at her home sometime after 11 p.m. with "Legend." She further noted that the two men were evasive about what they were doing that night. Detective Rossi then placed Gill in an interview room

while the police interviewed codefendant. Detective Ross then informed Gill of his *Miranda* rights, which Gill stated he understood. Detective Rossi then questioned Gill, who told the police he was with codefendant the entire evening, but claimed no knowledge of the shooting incident.

¶ 30 In short, Gill voluntarily appeared at the police station with friends and agreed to be questioned by the police. Gill was aware the police had questioned Holness and codefendant. Although the police initially informed Gill of his *Miranda* rights, Gill was not searched, handcuffed, fingerprinted, or photographed. These factors do not suggest that Gill was initially placed under arrest.

¶ 31 Gill observes that he was in a police interview room from 8:30 p.m. on June 18 until 1:15 a.m. on June 19. The record establishes, however, that the police first questioned Holness, then placed Gill in an interview room while they questioned codefendant, which necessarily consumed some of this period of time. Gill was not under police interrogation during this entire period. By the time the police questioned Gill, Carter gave them reason to believe codefendant was one of the shooters, while Holness gave them reason to believe Gill had been with codefendant and that both men had been evasive with Holness regarding their whereabouts during the time prior to the shooting. Before the police requested Gill to stay overnight for a morning lineup, Gill informed the police he had been with codefendant all evening. Probable cause does not demand a showing that the belief that the suspect has committed a crime be more likely true than false. *Jackson*, 232 Ill. 2d at 275.

¶ 32 Given this record, the police had probable cause to arrest Gill regarding the shooting before the police requested Gill remain overnight at the police station to participate in the lineup. Accordingly, the trial court did not err in denying Gill's motion to quash arrest and suppress

evidence. Thus, Gill cannot establish he was prejudiced by the denial of the motion.

Accordingly, Gill cannot demonstrate his appellate counsel's failure to raise the issue in the direct appeal was ineffective assistance of counsel. *Maclin*, 2014 IL App (1st) 110342, ¶ 32; *Lacy*, 407 Ill. App. 3d at 457.

¶ 33

## Due Process

¶ 34 Gill also contends he was denied due process of law because he was not informed the State would seek to convict him in the alternative on the theory of accountability. "Indictments must apprise defendants of the offenses charged with sufficient precision to enable the defendants to prepare defenses and to allow pleading the judgments to bar future prosecutions." *People v. Lee*, 344 Ill. App. 3d 851, 854 (2003) (citing *People v. Alexander*, 93 Ill. 2d 73, 79 (1982)). "An indictment adequately informs a defendant of the charge where it specifies the offense alleged and that the defendant committed it in any of several closely associated ways." *Lee*, 344 Ill. App. 3d at 854 (citing *United States v. Dean*, 969 F.2d 187, 195 (6th Cir. 1992)). Due process, however, does not require the indictment to specify whether the prosecutor will prove the defendant guilty as a principal or as an accessory. *Lee*, 344 Ill. App. 3d at 854 (citing *People v. Bates*, 16 Ill. 2d 290, 295 (1959)). "An indictment that charges the defendant with acting as a principal can support a verdict finding the defendant liable as an accessory." *Lee*, 344 Ill. App. 3d at 854 (citing *People v. Carlson*, 224 Ill. App. 3d 1034, 1045 (1992)). Accordingly, Gill cannot demonstrate a substantial showing of a constitutional violation on this issue.<sup>2</sup>

---

<sup>2</sup> We also observe in passing that in this case, the jury specifically found Gill discharged the firearm that killed Moore. The jury did not find Gill guilty on the theory of accountability. Accordingly, Gill was not prejudiced by any lack of notice that the State could seek to prove Gill was guilty based on the theory of accountability.

1-12-1031

¶ 35

CONCLUSION

¶ 36 For all of the aforementioned reasons the judgment of the circuit court of Cook County is affirmed.

¶ 37 Affirmed.