

SIXTH DIVISION
January 30, 2015

No. 1-13-0483

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 4086
)	
JAMES FREEMAN,)	Honorable
)	Michael Brown,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

O R D E R

- ¶1 **Held:** Court did not err in summarily dismissing post-conviction petition claiming ineffective assistance of trial counsel; it is not arguable on this record that trial counsel was ineffective for not seeking to introduce evidence of allegations that a detective who interviewed him had previously induced false confessions.
- ¶2 Following a jury trial, defendant James Freeman was convicted of first degree murder and sentenced to 60 years' imprisonment. We affirmed on direct appeal. *People v. Freeman*, No. 1-09-1148 (2011) (unpublished order under Supreme Court Rule 23). Defendant appeals from the December 2012 summary dismissal of his *pro se* post-conviction petition, contending that it

stated the gist of a meritorious claim that trial counsel rendered ineffective assistance by not investigating his claim that his confession was coerced by police detective Kenneth Boudreau.

¶3

PRETRIAL

¶4 Defendant was charged with first degree murder, aggravated kidnapping, and aggravated unlawful restraint of Robert Green, and home invasion and armed robbery of Shontell Williams, allegedly committed while armed with a firearm on or about December 26, 2002.

¶5

Motion to Suppress Statements

¶6 Defendant filed a motion to suppress statements, alleging that he was arrested on January 13, 2004, and interrogated by various law enforcement officials (officials) including "Detectives J. O'Brien, E. Utterback, E. Winstead, W. Svilar, K. Boudreau [and] P. Smith; Officers P. McKenzie and L. Starling; FBI agents R. Loyd and Julie Laabs; investigators from the Indiana State Police [and] ASA Levine." He alleged that he was not informed of his *Miranda* rights before interrogation, that he repeatedly told various officials that he wanted an attorney present before he would answer questions, and that his request to make a telephone call to his family to obtain counsel was denied. He alleged that his statements resulted from physical coercion in that he was detained for three days in a small room, handcuffed to a wall, with nothing to eat and told he would be fed if he gave a videotaped statement. He also alleged that his statements resulted from psychological and mental coercion in that he was told that if he did not confess, his girlfriend Sonia Montgomery would be charged with a felony and he would lose custody of his daughter to the Department of Children and Family Services (DCFS). Lastly, he alleged that his statements resulted from material misrepresentations: that if he gave a statement placing himself at the scene of the Green murder then Montgomery could go home, he would not be charged

with any offense against a Maverick Johnson who just identified defendant in a lineup, and he would be a State witness no longer facing charges.

¶7 At the motion hearing in 2007, police sergeant William Svilar testified that he and police detectives Edward Winstead and Kenneth Boudreau went at about 5:30 or 6 p.m. on January 14, 2004, to interview defendant, who was in custody at a police station on charges unrelated to the Green case. Before the interview, Detective Winstead informed defendant of his *Miranda* rights. Defendant expressed that he understood his rights and agreed to talk, then gave a brief statement denying any knowledge of the Green case. Detective Winstead went home after this first interview. Sergeant Svilar spoke again with defendant at about 7:45 p.m. after reminding him of his *Miranda* rights and defendant expressing that he understood them. Defendant then gave a statement regarding the Green case, based on which Sergeant Svilar resolved to find Montgomery, though she was not a suspect. Montgomery was brought voluntarily to the police station, accompanied "at some point" by her sister, and Sergeant Svilar interviewed her that evening for about an hour. Following Montgomery's statement, Sergeant Svilar called for an Assistant State's Attorney (ASA).

¶8 ASA Jeffrey Levine came to the station at about 9:30 p.m. and Sergeant Svilar briefed him on the investigation and the interviews of defendant and Montgomery. Sergeant Svilar and ASA Levine spoke with Montgomery at about 11 p.m., and she gave a statement. ASA Levine wrote the statement, which was reviewed and signed by Montgomery with the opportunity to make changes or corrections. A photograph was taken of Montgomery, which she also signed. At the hearing, Sergeant Svilar identified Montgomery's photograph and three-page written statement with exhibits. In particular, he identified her signature on the photograph, and the

signatures of Montgomery, Sergeant Svilar, and ASA Levine on each page and exhibit of the statement, as each signed in the others' presence.

¶9 At about 2:30 a.m. on the 15th, Sergeant Svilar and ASA Levine interviewed defendant, after ASA Levine informed him of his *Miranda* rights and he replied that he understood them. Based on defendant's ensuing statement, defendant, Sergeant Svilar, ASA Levine, and Detective Boudreau went at about 3:30 a.m. to 6736 South Union Avenue in Chicago, where Green was held after his kidnapping. They stopped at a White Castle restaurant where they bought defendant a meal, then went to an apartment in the 7600 block of south Yates Boulevard in Chicago where the home invasion and kidnapping occurred, and then returned to the police station. At about 4:30 a.m., Sergeant Svilar and ASA Levine met with defendant, who was asked how he wanted to record his statement and chose a videotaped statement. A videographer was called to the station, and defendant gave a videotaped statement at about 6:30 a.m. in the presence of Sergeant Svilar and ASA Levine. At the hearing, Sergeant Svilar identified the video of defendant's statement and the video was shown to the court.

¶10 In the video, ASA Levine recited that he and Sergeant Svilar were there to investigate Green's robbery and shooting, and he told defendant that he was not his attorney but a prosecutor. Defendant replied affirmatively when ASA Levine asked if he had advised defendant of his constitutional rights and if the detectives had done so earlier. ASA Levine recited the *Miranda* warnings – which defendant stated he understood – and defendant agreed to talk. He also affirmed that he had signed a form consenting to videotaping of his statement. Defendant answered various prefatory questions, including that he resided with Montgomery at the time of the statement and that he attended but did not complete the 8th grade. ASA Levine recited that

defendant had earlier admitted that he, "JR, Chachi, and some other guys planned to kidnap and rob" Green, and "in the course of the kidnapping Chachi shot and killed" Green. Defendant identified photographs of his friends Chachi and JR. He also identified a photograph of Green and described him as a "big time dealer" of drugs with "thousands" of dollars in cash.

¶11 On December 26, 2002, defendant drove Montgomery to work in her white 1997 Mercury LeSabre (the Mercury), then called Chachi and JR separately to buy drugs for resale; JR noted that Green had drugs to sell. When defendant and JR met, JR suggested kidnapping and robbing Green instead. Defendant agreed and called Chachi to invite him to join the kidnapping. The three met in the Mercury (JR and Chachi for the first time as best as defendant knew) and JR set forth his plan that Chachi and some acquaintances would kidnap Green while defendant pretended to buy drugs. Defendant knew that Chachi carried a gun and saw that he was carrying it that day. A few minutes later, Green arrived at 71st Street and Princeton Avenue in a blue Pontiac Grand Prix (a photograph of which defendant identified) and defendant started to engage in a drug transaction with him. Chachi and three other men arrived in a black Chevrolet Caprice, and defendant saw that the other men also had guns. They pulled Green from the Grand Prix, and Green was shot in the legs when he struggled. Green was forced into the trunk of the Caprice, defendant drove off with Chachi in the Grand Prix while leaving the Mercury at 71st and Princeton, and they all met at a two-story garage at the Union Avenue address. Chachi's men took Green upstairs, where Chachi learned that Green kept his money at his "baby mom's house" at 76th Street and Yates Boulevard.

¶12 Chachi took Green's keys to the Yates address, a three-flat, and went there with defendant and two others. As defendant stood lookout downstairs, Chachi and the others entered with

Green's keys and went upstairs, returning about three minutes later with Chachi carrying a pink purse. Upon returning to the Union Avenue garage, Chachi told the others that they had to kill Green because he had seen the faces of defendant, Chachi and some of his men. Green begged to not be killed as he had cooperated. Chachi had Green put into the trunk of his Grand Prix and defendant drove it, with Chachi as passenger while some of his men followed in another car. During the drive, Chachi fired four or five shots through an opening in the back seat leading to the trunk where Green was being held. Defendant parked the Grand Prix near 51st Street and Talman Avenue (identifying a photograph of the location) and left in the other car. At another location, defendant saw that the pink purse contained \$60,000 cash. About two days later, defendant heard from Montgomery that police wanted him for questioning, and he and Chachi took their \$30,000 of the proceeds (the rest going to Chachi's men) and went to Memphis. Defendant returned to Chicago on July 4, 2003, after the money ran out, and on his return told Montgomery "part" of what happened.

¶13 In the statement, defendant agreed that he was treated "fairly" at the police station and ate food from White Castle as well as drinking coffee and smoking cigarettes. He was allowed to sleep and use the washroom. He was not threatened or promised anything for his statement and agreed that it was freely and voluntarily given. He acknowledged that "this case has nothing to do with" his other pending cases and denied that he was under the influence of drugs or alcohol.

¶14 Sergeant Svilar denied that defendant was handcuffed while he spoke with him, that defendant requested counsel at any time, that any other official made him aware that defendant requested counsel, that he denied defendant any telephone calls, or that he or any other official told defendant that he would not be provided food unless he gave a videotaped statement. He

denied that he, or to his knowledge any other official, told defendant that Montgomery would be charged with a felony and/or defendant would lose his daughter to DCFS if he did not give a statement. He denied that he or any official in his presence told defendant that, if he gave a statement placing himself at the scene of Green's murder, Montgomery could go home, defendant would not be charged with any offense against Maverick Johnson based on his lineup identification of defendant, and/or defendant would not be charged with any offense because he would be a State witness.

¶15 On cross-examination, Sergeant Svilar clarified that neither he nor Detective Boudreau was working on the Green case before January 14, 2004, but Detective Winstead and others were. The Green case was being investigated from the Area 1 police station while Sergeant Svilar and Detective Boudreau worked at, and interacted with defendant at, the Area 2 station. Sergeant Svilar was not present for defendant's arrest and did not know the time on the 13th when he was arrested. While Sergeant Svilar could not know what other officials spoke to defendant after his arrest, to the best of his knowledge nobody discussed the Green case with him before Sergeant Svilar first interviewed him with Detectives Winstead and Boudreau. At some point on January 14 or 15, agents of the Federal Bureau of Investigation (FBI) and at least one officer of the Indiana State Police investigating a homicide in Indiana interviewed defendant at the station; Sergeant Svilar was not present for such interviewing.

¶16 While Sergeant Svilar interviewed defendant in a conference room, defendant had been held in an interrogation room that has rings on the wall for handcuffing and contains a metal bench rather than a bed. When Sergeant Svilar interviewed defendant the second time, at about 7:45 p.m., defendant was brought to the conference room by "[p]ossibly Detective Boudreau or

one of the other detectives," so that Sergeant Svilar did not see defendant between the first and second interviews. ASA Levine was not alone with defendant – that is, outside Sergeant Svilar's presence – except for a brief period at the end of their interview. Sergeant Svilar did not see defendant between ASA Levine's brief interview of him around midnight and taking defendant to the scenes of the crime at about 3:30 a.m., and he did not take defendant to a cell with a bed or bunk. Sergeant Svilar's notes reflected buying a meal for defendant. Defendant ate part of the meal – chicken rings, french fries, and a soda – while they were driving between scenes, and ate the rest upon returning to the police station. Defendant never signed a written *Miranda* waiver.

¶17 Sergeant Svilar was aware that Montgomery had spoken with other officials about a year before he interviewed her. He could not recall who brought her to the station, or even if he had done so himself. Detective Boudreau spoke with Montgomery; at first, Sergeant Svilar denied that Detective Boudreau did so outside his presence to his knowledge, but later testified that "[h]e may have." Sergeant Svilar denied telling Montgomery that she could be charged with harboring a fugitive or another offense, or DCFS could take her child, if she did not cooperate.

¶18 Sonia Montgomery testified for the defense that she has a daughter with defendant, who she knew since 1999. Sometime around January 2003, a police officer named "Ken" came to Montgomery's home to interview her. On January 14, 2004, she received a phone call from the police to the effect that they would release her car, a white Mercury Sable, to her if she went to the police station and that they would come to her home to bring her to the station. A man and a woman, identifying themselves as FBI agents, brought her to the Area 2 police station at about 6:30 p.m. As she waited in an office until about 11:45 p.m., she saw the two FBI agents and Ken. Ken asked her for a statement, and when she responded that she couldn't give one as she did not

know anything, Ken replied that "they would take my daughter" and she "would go to jail for letting [defendant] stay at my house." Ken repeated the same several times, and also told her that it would help defendant if she gave a statement because Ken was "trying to get the guys who did it" rather than defendant. Montgomery was "terrified" and had no counsel or relative present, and thus felt pressured into giving a statement. She was provided a written statement and signed it, and also signed a photograph of herself, and then was driven home by her sisters.

¶ 19 On cross-examination, she denied knowing either ASA Levine or Sergeant Svilar and "remember[ed] talking to another guy" but could not "remember another detective being there." However, on further questioning, she clarified that an ASA and a detective other than Ken gave her the statement to sign and that Ken was not in the room as they handled the statement. She could not recall whether she was alone with the ASA before signing the statement. She recalled being asked questions but could not remember reviewing the statement before signing it. She identified the signed statement and her signatures, and she confirmed that various prefatory facts therein (her age and date of birth, where she lived, who she lived with, where she attended school) were correct. Several initialed corrections were made to the statement, including at least two – Montgomery's daughter's name and that Roderick is known as Chachi – resulting from Montgomery's feedback. Montgomery disagreed with the portion of the statement that she was able "to come and go as she pleased" and see her sisters while at the station; she stayed in one room, did not feel free to leave (though she was not handcuffed), and did not meet with her sisters, who were at the station. She could not refute or confirm the statement's assertion that she was allowed to make telephone calls. Montgomery also identified the photograph as how she appeared upon arriving at the station.

¶20 Defendant testified that he was educated to only the 8th grade. He was arrested while sitting in a car behind an apartment building, and then taken to a police station at about 9:45 p.m. on January 13, 2004. He was read his *Miranda* rights upon arrest but did not understand them; he also testified that he knew he had the right to remain silent. He was "placed in a room for some hours" where he had a bed or cot but napped for about an hour rather than sleeping. At about 6:30 or 7 a.m., he was taken into an interview room – an "eight by ten" room with a bench and without a clock – and handcuffed to the wall. He was first interviewed by two investigators from Indiana, who read him his *Miranda* rights before interviewing him for about 30 minutes about the murder of an Indiana state trooper, then by two FBI agents regarding Maverick Johnson and drug sales, then by another official regarding the shooting of Johnson, and then briefly by detectives about the Green case. Defendant asked for an attorney from the Indiana and FBI investigators and from the detectives, as he had upon arriving at the station, but received no response and was not provided counsel.

¶21 At some point, defendant was placed in a lineup. At some point, he saw Montgomery passing by his room. At some point, detectives questioned him at length about the Green case. They told him that if he did not give an account placing himself at the scene of the crime, Montgomery would be arrested and his daughter would be "taken," while he would be a witness and not be charged if he gave such an account. Defendant was in custody for about 24 hours before he saw an ASA, who showed him a law book and said that Montgomery would be charged with aiding and abetting a fugitive, for lending him her car and allowing him to stay in her home, if he did not cooperate. Defendant would face no charges if he cooperated, the ASA said, because the target of the investigation was Roger (or Roderick) Smith or "Chachi" rather

than defendant. Defendant was not read his *Miranda* rights before his videotaped statement. He had about three hours sleep while at the station for over 24 hours, he had nothing to eat until about the White Castle food at about 4 a.m., and he did not drink (as he does not drink) coffee. He was confused when he gave his videotaped statement, and he felt that the detectives and ASA had "play[ed] on me, play[ed] on my family." Defendant was unable to name any of the officials he dealt with or asked for an attorney.

¶22 On cross-examination, while defendant was "not gonna say I understood" the *Miranda* warnings given at his arrest, he knew that he had a right to remain silent and to an attorney including a "free lawyer" if he could not afford one, but denied knowing that he could have an attorney "right there on the spot" at the police station. Defendant admitted that Maverick Johnson is a friend of his. Defendant recognized Sergeant Svilar as one of the detectives who questioned him in the instant case, and he recognized the ASA in the videotaped statement as the one who interviewed him earlier. The videotaped statement was based on a written statement that the ASA provided to defendant and coached him on before the videotaping. While defendant identified himself in the videotaped statement, he explained that he answered questions as he did because of the earlier promises and threats, denying that the statement was voluntary as he said in the statement. Regarding the ASA's threat to charge Montgomery, defendant denied telling Montgomery that either he or her car was involved in the Green homicide and denied giving her any money from the Green crimes; he nonetheless feared that the ASA could charge her. Defendant denied leaving the police station to view any crime scene; the White Castle food was given to him at the station. Defendant was not charged with the murder of the Indiana trooper or any offense regarding Johnson, nor was Montgomery charged with anything.

¶23 Following arguments, the court denied the motion to suppress. The court found that defendant was in custody for nearly 33 hours from his arrest before 10 p.m. on January 13 to his videotaped statement at about 6:30 a.m. on the 15th and that he was interrogated by various officials during that time. The court found Montgomery's testimony regarding threats to be not credible. The court noted defendant's "relaxed" demeanor during the videotaped statement as well as his statements therein regarding his treatment and found that he was given *Miranda* warnings several times, waived his rights several times, and his testimony that he repeatedly requested counsel from Indiana and FBI investigators as well as police was not credible.

¶24 Motion to Quash Arrest

¶25 Defendant filed a motion to quash his arrest, alleging that his arrest at about 9 p.m. on January 13, 2004, "while seated in a vehicle," by "Police Officers Steve Dejoie and Georgios Apostolis" was made without reasonable suspicion that he was involved in a crime and that a post-arrest search inside the vehicle recovering a firearm was also unlawful. He sought to suppress all evidence resulting from his arrest, including his post-arrest statements on the basis that nothing intervened between his arrest and interrogation to attenuate the unlawful arrest.

¶26 The State moved to strike the motion to quash, arguing that (1) defendant had two arrest warrants against him at the time of his arrest, and (2) contrary to defendant's allegations, he was detained by security guards – not police officers – DeJoie and Apostolis while his car was in a private lot after business hours and he was "engaged in a sex act," so that he was trespassing, and the guards saw marijuana and a pistol in the car and called the police. Attached to the motion to strike were copies of two warrants for defendant's arrest, issued in May 2002 (and reissued in March 2003) in case 02C1440217 and issued in January 2003 in case 02MC1-152491.

¶27 The court denied the motion to strike and held an evidentiary hearing on the motion to quash in 2008. Defendant testified that, at about 9 p.m. on January 13, 2004, he was conversing with a female friend named Kim in a car parked behind an apartment complex as he waited for another friend, Maurice, to come out of his apartment there. (Defendant identified photographs of the parking lot and where he was parked.) A white car boxed him in so that he could not drive away and two male officers – in uniforms but not Chicago police uniforms – exited the car with guns drawn and approached defendant's car. One ordered him to exit his car, and handcuffed defendant when he did so, while the other ordered defendant's friend to exit the car and then searched it. During the search, that officer told the other that he found a weapon. The Chicago police were called, and arrived in about 10 minutes. The police officers put defendant in their handcuffs and took him to the police station, where he was handcuffed to the wall in a room. He was at the station for "two to three days" and was questioned during that time, giving a statement that he expected to be used against him at trial. On cross-examination, defendant admitted that he had a gun in the car that night. He could not recall Maurice's last name, apartment number, or telephone number. He once knew, but could no longer recall, Kim's telephone number.

¶28 Police officer Patrick McKenzie testified that he and partner Lolita Starling responded at about 9:21 p.m. that night to a report of a gun and people having sex in a car. Upon arriving at the apartment complex, he met plainclothed security guards DeJoie and Apostolis who told him that defendant and the woman were having sex in a car. Defendant was arrested and placed in police handcuffs, with the guard's handcuffs returned to him, and then brought to the police station. There, Officer McKenzie learned that defendant had three arrest warrants against him and turned him over to detectives. On cross-examination, Officer McKenzie testified that the

guards' badges were marked "State of Illinois Police Officers" and that both defendant and the woman were fully dressed. Beyond that the guards saw defendant and the woman "in the act" of sex, Officer McKenzie did not ascertain what they had been doing.

¶29 Following arguments, the court denied the motion to quash. The court found that defendant had shown the security officers to be State actors for constitutional purposes when they ordered him out of the car, handcuffed him, and searched the car. However, the court found defendant's account that he was not doing anything suspicious "incredible" and concluded that it was proper for the security officers to detain him and search the car because they saw him having sex in it, and for the police officers to rely upon that report in arresting defendant.

¶30 Motion *in limine*

¶31 Among the parties' motions *in limine* before trial, the State sought to bar defendant "from making comments concerning the following topics: former governor George Ryan, wrongfully convicted individuals and wrongful convictions in general, capital case reforms (this is not a capital case) and reforms to the criminal justice system in general, false confessions, police and prosecutorial misconduct, commutation of sentences, and any media coverage similar to the above topics." At the hearing *in limine*, defendant objected on this point, with defense counsel noting that he did not intend to "dwell on things like wrongfully convicted individuals" or "anything like false confessions, police and prosecutorial misconduct, and things like this" but did intend to argue "that this is a false confession and [defendant] is wrongfully charged in this case." The State responded that it had no objection to defendant attacking his own confession but only to arguing wrongful convictions in general because the jury is "supposed to only pay

attention to the evidence in this case." The court granted the State's motion as to "general mention of those topics. You can argue as to the evidence in this case."

¶32

TRIAL

¶33 The case went to trial in 2009 on the first degree murder and aggravated kidnapping charges. Green's sister Moneeka Jackson and brother Kevin Ross testified that Green was a drug dealer, lived at the Yates address with his girlfriend Shontell Williams and in an apartment elsewhere, and drove a blue Pontiac Grand Prix registered to Jackson. Jackson and Ross saw or spoke to Green daily or nearly so, and Jackson reported him missing after she and Ross last saw him at about 4 p.m. on December 26, 2002. They did not see Green or the Grand Prix again until May 2003, when the Grand Prix received a parking ticket and Green's body was found.

¶34 At about 5:40 p.m. on December 26, 2002, police officers responded to a report of a kidnapping at 71st and Princeton and found blood stains, bloody clothing with a handgun on top of it, a black cap with eyeholes, and a loaded pistol magazine. Based on their investigation, the police were seeking Green's blue Grand Prix, a black Chevrolet Caprice, and a white Mercury Sable. A white car was parked at the scene, among others, when police arrived but it was not deemed evidence at first and was gone by the time police were seeking a white Mercury. A certain black Caprice was stolen on December 14 or 15 and found on December 28 with extensive fire damage and missing its hood; also found were a black glove and spent bullet in the trunk, a fingerprint outside the trunk, and blood stains on the bumper. A black car hood was found in the Union Avenue garage in late 2003 by the garage's owner but he discarded it. DNA testing found that blood on the recovered gun and the Caprice was not defendant's but Green's.

¶135 Shontell Williams testified that Green kept drugs and cash in a purse in a closet in their apartment at the Yates address; as of mid-December 2002, the purse contained \$85,000. Only Williams and Green had keys to the Yates apartment. On December 26, Green left the apartment after noon and returned at about 6 p.m. for about a half-hour; Williams never saw him alive again. About a half-hour after Green left, the double-locked apartment front door was opened with keys. Williams glimpsed a man other than Green entering the apartment. He shoved her into a bedroom and covered her head with the bedcover, and she believed that a hard object was briefly pressed against her head. She heard the man go directly to the closet containing the purse; when he asked if there was anything else in the apartment, she said that she did not know. She heard three different voices in the apartment and sounds of the apartment being searched. When she asked the man where Green was, he replied that "he's straight. This ain't nothing. He'll come back up." Once Williams realized the three people were gone, she went to her mother's home nearby and the police were called. At first, Williams did not tell the police that the purse contained drugs but only about \$4,000 because she did not want the police to know Green was a drug dealer. However, in a later police interview she told the truth about the purse's contents to the best of her knowledge. In October 2003, she viewed a photographic array and identified Roderick Smith as the man she glimpsed in her apartment.

¶136 When the blue Pontiac Grand Prix was examined at 53rd Street and Talman Avenue on May 6, 2003, it had two flat tires and a parking ticket on the windshield, and there was a strong odor of decomposing flesh coming from the trunk. Green's body, two bullets, and latent fingerprints were found in the trunk, various stains were found inside the car, and fingerprints were found on the interior and exterior of the car. Green's clothed body was wrapped in a blanket

and twine, with bullet holes through his pants but not the blanket. An autopsy found that he died of multiple gunshots including two to his legs – two bullets and bullet fragments were recovered from the body – and the state of the body was consistent with death several months earlier.

Testing found that Green was shot with two guns, neither being the one found at the scene, and that none of the recovered fingerprints was suitable for comparison.

¶137 Sonia Montgomery testified that defendant frequently borrowed her white 1997 Mercury Sable while they lived together, and he did so on December 26, 2002, after driving her to work at about 9 a.m. She did not see defendant again that day, but he phoned her that night to tell her to retrieve the Mercury at 71st and Princeton, which she did later that night. She testified that his call was not late in the evening, and could not recall testifying in an earlier proceeding that he called between 10 p.m. and midnight. When he called again two days later, she told him that police had come looking for him, then did not hear from him again until July 4, 2003. Defendant eventually moved back in with Montgomery and, in January 2004, borrowed the Mercury and did not return for a few days. Later that month, Montgomery received a phone call from police informing her that they had defendant in custody and that she could get the Mercury. Two police officers brought her to the station. On cross-examination, she added that one of the officers who came looking for defendant in December 2002 was named Ken. In January 2003, officers asked her for permission to search the Mercury, which she granted; the car was not impounded after the search. Ken returned in May 2003 to tell Montgomery that a body had been found and to ask if she had seen or heard from defendant. When she went to the police station in January 2004, she arrived at about 6 p.m. and was brought into a room where she waited until nearly midnight; she never got the Mercury back because it was impounded.

¶38 Security guard Steven DeJoie testified that, at about 9:30 p.m. on January 13, 2004, he and fellow guard Apostolis were patrolling an apartment complex, wearing badges and bulletproof vests and riding in an unmarked vehicle, when DeJoie saw a man and woman engaging in a sex act in the back seat of a white sedan in the complex's visitor parking lot. He instructed them to step out of the car, and they did so after the man – defendant – pulled up his pants and donned his boots. When DeJoie then saw a bag of marijuana and a pistol in the car, he detained defendant with handcuffs and called the police. Police officer Lolita Starling testified that she and her partner responded to that call and that the guards holding defendant turned over to her a loaded gun and marijuana. She arrested defendant for unlawful use of a weapon, and police took possession of defendant's white Mercury Sable and impounded it due to the gun found inside. The jury was instructed that the testimony of DeJoie and Officer Starling was admitted for limited purposes only – the circumstances of defendant's detention and arrest – and heard a stipulation that the recovered pistol was not involved in the Green homicide. Officer Herman Thomas testified that, when he booked defendant at the police station at about 4:30 a.m. on January 14, defendant had the opportunity to make a telephone call but did not do so. Sergeant Robert Myers testified that he took defendant from the station lockup to an interview room at about 9 a.m., that he was the first person to sign defendant out of lockup since his booking, and that he read defendant his *Miranda* rights before leaving him alone in the locked interview room. Sergeant Myers did not question defendant but notified other law-enforcement agencies, including federal agencies, that he was in custody.

¶39 Sergeant William Svilar testified that he and Detectives Winstead and Boudreau went at about 5:30 p.m. on January 14 to interview defendant. Beforehand, Sergeant Svilar familiarized

himself with the Green case as he had not been assigned to it until about an hour earlier; Detective Boudreau had worked on the Green case and provided some of Sergeant Svilar's information. Before the interview, defendant was informed of his *Miranda* rights, including that counsel would be provided before questioning if he so requested. Defendant gave a brief statement to the effect that he was driving Montgomery's car, dropped it off at 71st and Wentworth, and called her to pick it up; he denied knowledge of the Green case. Sergeant Svilar next spoke with defendant at about 7:45 p.m. with Detective Boudreau, after reminding defendant of his *Miranda* rights. Defendant gave a statement to the effect that he bought drugs from Green in Green's car at 71st and Princeton and then left with a friend, leaving his own car at the scene. Between the 7:45 p.m. and 2:30 a.m. interviews of defendant, Montgomery was at the station and "we" spoke with her; defendant was probably told at the beginning of the 2:30 a.m. interview that Montgomery was at the station.

¶40 ASA Levine came to the station at about 9 p.m. at Sergeant Svilar's behest. Sergeant Svilar next spoke with defendant at about 2:30 a.m. with Detective Boudreau and ASA Levine, after ASA Levine read the *Miranda* warnings to defendant. In an interview of about an hour, defendant admitted that he, JR, and Chachi planned to rob Green, and that he drove Montgomery's car to 71st and Princeton to buy drugs from Green, but instead Chachi and three other men, all armed, arrived in a black Chevrolet and shot Green in the leg in the course of forcing him into the trunk. They took Green to a home near 65th and Union, where they extracted from him that he kept money and drugs in a home at 76th and Yates. Defendant went there with Chachi and others, and waited outside while they went inside briefly and returned with a bag or purse containing a large sum of money. They returned to where Green was held and put

him in the trunk of his own car. Defendant drove while Chachi fatally shot Green by folding down the back seat covering the trunk; they then abandoned Green's car. They divided the proceeds, and defendant and Chachi went to Memphis but eventually returned to Chicago.

¶41 Defendant agreed to take them to the place where Green was held, and at about 3:30 a.m. he accompanied Sergeant Svilar, Detective Boudreau, and ASA Levine as they traveled to the Union Avenue address. There was a house in front and two-story garage in the rear, defendant indicated that Green was held in the garage, and they briefly explored the premises. Defendant agreed to take them to 76th and Yates where the robbery occurred, and there he indicated the second-floor apartment that Chachi and the others entered. On the way back to the police station, they stopped at White Castle and bought defendant a meal. At about 4:30 a.m., Sergeant Svilar, Detective Boudreau, and ASA Levine briefly discussed with defendant how to memorialize his statement. At about 6:30 a.m., Sergeant Svilar and ASA Levine met defendant for a videotaped statement; the earlier statements were not videotaped. Sergeant Svilar did not see defendant again until "some years later" and was not involved in the investigation in the interim.

¶42 ASA Jeffrey Levine testified that he was working felony review on January 14, 2004, when he was called at about 9 p.m. to a police station. There, he met with detectives and reviewed records to familiarize himself with the investigation of the Green kidnapping and murder. At about 2:30 a.m., he, Sergeant Svilar, and Detective Boudreau met with defendant, who was not handcuffed, in a conference room. ASA Levine told defendant that he was not his attorney but a prosecutor and advised him of his constitutional rights. Defendant replied affirmatively when ASA Levine asked if he understood each of the *Miranda* warnings and if he agreed to talk. Defendant gave the statement described above by Sergeant Svilar, giving coherent

answers to ASA Levine's questions and at no time complaining that he could not understand ASA Levine. ASA Levine asked defendant to show him the locations he mentioned, and they did so as described above. On returning to the police station at about 4:30 a.m., ASA Levine asked how defendant wanted to memorialize his statement, and he chose video. At about 6:30 a.m., after a videographer arrived at the police station, defendant gave his videotaped statement before ASA Levine and Sergeant Svilar in the conference room. In the interim, defendant ate the food from White Castle, ASA Levine ascertained from him (outside the presence of any other official) that he was treated properly by the police, and defendant and ASA Levine signed a consent form for videotaping. The videotaped statement was shown to the jury.

¶43 On cross-examination, ASA Levine testified that, at the police station that day, he had a copy of the Criminal Code and was aware that Montgomery was there. He could not recall at trial if the Code includes a criminal offense of aiding a fugitive, but his recollection was refreshed that there is such a felony offense. ASA Levine asked defendant to identify certain photographs just before the videotaped statement, then began the statement by summarizing defendant's earlier unrecorded statements before asking him questions. In the statement, defendant described Green's car as a black Chevrolet Caprice before correcting to a blue Grand Prix, he described the gun found at the scene as a machine gun, he initially stated that he was "forced" into the car with Green in the trunk before correcting that he entered the car, and he described the location they parked the car containing Green's body as 51st and Talman though he also identified a photograph of 53rd and Talman where the car was found. ASA Levine never interviewed Chachi; that is, Roderick Smith. On redirect examination, ASA Levine explained

that, because it was defendant's statement "he's free to answer any way he wants *** [e]ven if it's something that you know is different."

¶44 The State rested, and defendant's motion for a directed verdict was denied.

¶45 Defendant testified that, before 9 a.m. on December 26, 2002, he drove Montgomery to work in her Mercury. He then met Charley Webb, nicknamed "Junior," to buy some drugs; they drove around for about three hours in the Mercury, while Junior tried unsuccessfully to get drugs from Green, and defendant left Junior at his home at 71st and Princeton. Defendant then met a man he knew as "Dre" at 71st Street and the DanRyan Expressway to buy drugs; he had Dre follow him to 71st and Princeton where he left the Mercury, then spent five or six hours in Dre's car. Defendant called Montgomery at about 10 p.m. and told her where the Mercury was parked. When defendant called her again a "couple" of days later, she told him that "Feds" and police had been to her home seeking him, so he decided to stay away. He did so until July 2003, when he received her permission to live in her home. No officials came to their home after that time seeking him.

¶46 On the evening of January 13, 2004, he was arrested in the Mercury and taken to the police station. At about 6:30 a.m. on the 15th, he gave a videotaped statement admitting to participating in the Green offenses – which he denied at trial – because "they" (ASA Levine and three detectives) threatened to place his daughter in DCFS custody. ASA Levine also threatened to charge Montgomery with supporting a fugitive, pointing out in a "law book" the crime she would be charged with. Defendant testified that he was "under pressure" when he gave his statement because ASA Levine and other officials were threatening to charge him with other crimes he had "no knowledge about," and because he was kept handcuffed to the wall in a room

with a metal bench while he "didn't have any sleep or food;" he had about three hours of sleep, and he ate only the White Castle meal on the 15th just before his confession. Because he was told he could become a witness against Chachi and Junior, he expected that his family would be "left alone" and no charges would be brought against him. Before his statement, ASA Levine and a detective reviewed with defendant "what needed to be said" in his statement. He was not released after he gave his statement, and he was not called as a witness against Chachi.

¶47 On cross-examination, defendant admitted that he supported himself as of December 2002 by gambling and selling drugs. He tried to buy drugs from or through Junior on December 26 for the first time because he "wasn't able to reach" his usual drug suppliers. Defendant was "driving around *** the city" for approximately three hours between leaving Junior at his home before noon and meeting Dre at about 3 p.m. After he left Dre at about 9 p.m., defendant was "drinking and smoking" with some women "we had just met;" he could not recall the name of any of the people he was carousing with that night. On the morning of the 27th, a friend named Maurice picked him up at a hotel. He "laid low" after that because he had already heard rumors that the police were seeking him, before Montgomery told him that the police were seeking him regarding a kidnapping. Though he had not committed a kidnapping, he did not go to the police because he was "scared of the police" as he was a drug dealer. For the same reason, he did not tell the police about Dre or any of the people from the hotel who could have provided an alibi.

¶48 Defendant was with a woman he knew as Keke on January 13, 2004, and they rode around in the Mercury smoking marijuana, but at the time of his arrest they were merely waiting for a friend of defendant – Maurice, but not the same Maurice as on December 27, 2002 – to come out of the apartment complex. Defendant could not recall Maurice's telephone number,

though he called Maurice that night, or apartment number because he had never gone inside. He and Keke had been waiting for about five minutes in the visitor parking lot – in the front seat, clothed, and not having sex – when security officers approached with their guns drawn. When they asked for his driving license and proof of insurance, he was not carrying his license. After they ordered defendant and Keke out of the car, they found the marijuana and defendant's gun; the police came a short time later and arrested defendant, giving him *Miranda* warnings. At the police station, detectives spoke with him about the Green offenses before he went to the lockup at about 4:30 a.m. When he was taken later that morning to be interviewed, another detective read him the *Miranda* warnings before Indiana investigators and then FBI agents separately interviewed him about unrelated cases. During each interview, defendant asked for an attorney. He denied that he left the police station to visit any of the crime scenes, but said so in his statement because he was so instructed. He named Sergeant Svilar and Detective Boudreau as "the two" along with ASA Levine as those who threatened to take his daughter. While he gave answers in the statement other than simple "yes" or "no" replies, he explained that he was provided information before the videotaped interview. He denied that he was ever alone with ASA Levine. He did not expect to be released from custody after giving his statement, but instead that his daughter would not be taken into DCFS custody nor would Montgomery be charged with a crime. His daughter was not taken into custody and Montgomery was not charged.

¶49 In rebuttal, Federal agents Catherine Huber, Jeffrey Emmons, and Cynthia Carroll testified that they interviewed defendant on January 14 regarding cases other than the Green offenses, Huber for about 45 minutes beginning at about 1:30 p.m. and Emmons and Carroll for

about 45 minutes beginning at about 4 p.m. Defendant did not request counsel in their presence nor tell them that he had requested counsel from another official. Neither they nor anyone in their presence threatened to arrest Montgomery or take defendant's daughter into DCFS custody, nor did defendant complain that other officials made such threats. Nobody in their presence promised that he would be treated as a witness if he gave a statement. He did not complain of hunger nor did he appear tired or sleepy, and he answered questions coherently. None of them saw him before or after the interview, and none recalled meeting ASA Levine at the station.

¶150 Sergeant William Svilar and ASA Jeffrey Levine testified that defendant did not request counsel in his presence nor mention that he requested counsel from another official. Neither he nor anyone in his presence threatened to charge or arrest Montgomery or take defendant's daughter into DCFS custody, nor did defendant complain that other officials made such threats. Neither he nor anybody in his presence promised that defendant would be treated as a witness if he gave a statement. Defendant answered questions coherently, did not complain of hunger or ask for food, did not appear tired or sleepy, and was not denied the ability to sleep when not being interviewed. Shortly before his videotaped statement, defendant signed a form consenting to videotaping. Defendant was not instructed on what to say in his statement, though he had viewed the photographs of Roderick Smith, Charley Webb, and the area of 53rd and Talman in interviews before the videotaped statement. ASA Levine met briefly with defendant without any officers present to ascertain that he had no complaints about his treatment by the police or other officials. Sergeant Svilar admitted that he did not see defendant between interviews and that the only food defendant was given was the White Castle meal. When defendant was not being

interviewed, ASA Levine was sitting in an office area outside the room where defendant was held, and he did not see any other official enter the room.

¶51 Following arguments, instructions, and deliberation, the jury found defendant guilty of first degree murder (both felony murder and intentional or knowing murder) while armed with a firearm and aggravated kidnapping. In his unsuccessful post-trial motion, defendant challenged in relevant part the sufficiency of the evidence and the denial of his motions to quash and suppress. The court sentenced defendant on first degree murder to 60 years' imprisonment.

¶52 DIRECT APPEAL & POST-CONVICTION PROCEEDINGS

¶53 On direct appeal, defendant contended that the trial court erred in denying his request to proceed *pro se* and in admitting other-crimes evidence. Regarding the latter claim, we found that any error was harmless because "the evidence against defendant in this case, including defendant's videotaped statement, was overwhelming." *Freeman*, No. 1-09-1148, ¶ 36.

¶54 Defendant's September 2012¹ *pro se* post-conviction petition, as supplemented *pro se*, alleged ineffective assistance of trial counsel on various points and of appellate counsel for not raising trial counsel's ineffectiveness on direct appeal. In relevant part, defendant claimed that his confession was coerced and followed his demand for counsel. He argued that trial counsel should have (1) argued to the jury various discrepancies in the testimony of State witnesses regarding his detention, (2) called as witnesses various named persons to corroborate defendant's account

¹Defendant filed his supplemental petition in July 2012; the court acknowledged it on July 24, 2012, but noted that no initial petition was in the case file and thus removed this case from its call. Defendant resubmitted his initial petition, with a June 2012 mailing affidavit, in September 2012. On September 28, 2012, the court found that "the 90-day deadline *** is December 19, 2012." Defendant does not contend on appeal that his petition was summarily dismissed outside the aforementioned statutory period.

of his detention, and (3) presented evidence that Detective Boudreau had "a history of subjecting suspects to coercive and torture tactics in order to retrieve a statement."inducing false confessions, as would be shown from investigations by a special prosecutor in 2006 and the *Chicago Tribune* in 2001.

¶55 Attached to the petition were copies of a 2011 *Tribune* article mentioning Detective Boudreau and the 2001 investigation, various reports related to defendant's arrest, his interviews by police and federal agents, and the investigation of the Green homicide. The only affidavit attached to the petition or supplement was defendant's own, averring in relevant part that he learned after publication of the 2011 article that Detective Boudreau "has a history of mistreating suspects in order to get them to give a statement." The 2011 *Tribune* article mentioned that "[i]n a long career, Boudreau helped obtain confessions from more than a dozen defendants in murder cases in which the charges later were dismissed or the defendant was acquitted at trial" and that he "has been accused in both criminal trials and civil suits of punching, slapping, and kicking suspects as well as taking advantage of suspects with mental impairments or low IQs." The article did not mention any findings from these trials or judgments from these suits regarding Detective Boudreau, and it noted that Detective Boudreau and other mentioned "officers have repeatedly denied any wrongdoing." No article or related document from the 2001 *Tribune* investigation itself was attached to the petition. The supplemental petition includes a list of 40 police officers subpoenaed in the 2006 investigation, including Detective Boudreau, but not the special prosecutor's report to which the list was an exhibit, as defendant averred he had only excerpts of the report.

¶56 The court summarily dismissed the petition on December 13, 2012. The court found that the discrepancies in the State's evidence were "trivial" so that arguing them at trial would not have changed the outcome, and that not calling the suggested witnesses to defendant's detention was not ineffective because defendant had failed to show that they would support his account, and indeed many of them testified at trial in rebuttal of his account. As to Detective Boudreau, the court noted that defendant was subject at trial to an order *in limine* that he could not refer to wrongful convictions based on coerced confessions. The court found that "reference to false confessions in these other cases was irrelevant to the voluntariness of [defendant's] confession in this case, or, if not irrelevant, more prejudicial than probative." Trial was limited to "evidence bearing on the voluntariness of [defendant's] confession alone" and trial counsel "could not have raised the issue of false confessions elicited by Boudreau even if he had wanted to *** as any such evidence would have been excluded by the court." This appeal timely followed.

¶57

LAW & ANALYSIS

¶58 On appeal, defendant contends that the summary dismissal of his petition was erroneous because he stated an arguably meritorious claim that trial counsel rendered ineffective assistance by not investigating defendant's claims that his confession was coerced by Detective Boudreau.

¶59 A post-conviction petition may be summarily dismissed if it fails to present the gist of a meritorious constitutional claim; that is, if it is frivolous or patently without merit because it has no arguable basis in law or fact. *People v. Tate*, 2012 IL 112214, ¶ 9. In considering a petition at this stage, all well-pled facts must be taken as true unless positively rebutted by the record.

People v. Brown, 236 Ill. 2d 175, 189 (2010). A petition has no arguable basis in law or fact when based on an indisputably meritless legal theory or a fanciful factual allegation. *Brown*, 236

Ill. 2d at 185. A claim completely contradicted by the record is an example of an indisputably meritless legal theory, while fanciful factual allegations include those that are fantastic or delusional. *Id.* Our review of a summary dismissal is *de novo*. *Tate*, 2012 IL 112214, ¶ 10.

¶60 To state a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient – objectively unreasonable – and that the defendant was prejudiced by the deficient performance. *Id.*, ¶ 18. Generally, a post-conviction petition alleging ineffective assistance may not be summarily dismissed if counsel's performance arguably fell below an objective standard of reasonableness and the defendant was arguably prejudiced. *Id.*, ¶ 19.

¶61 Where a defendant alleges abuse by a particular police officer, evidence that the officer committed other, similar, acts of abuse can be used to prove a course of conduct by the officer when the acts occurred either at or near the time of the defendant's case or in a series of incidents over a span of years establishing a pattern or practice of abuse. *People v. Porter-Boens*, 2013 IL App (1st) 111074, ¶¶ 17-18, and *People v. Reyes*, 369 Ill. App. 3d 1, 18-21 (2006), both citing *People v. Patterson*, 192 Ill. 2d 93, 115, 140 (2000). However, mere allegations of misconduct, such as in a civil suit, are not admissible in the absence of disciplinary action or a finding of guilt. *Porter-Boens*, 2013 IL App (1st) 111074, ¶¶ 17, 20. Evidence is admissible if relevant to a disputed issue and its prejudicial effect does not substantially outweigh its probative value, with relevancy defined as having any tendency to make the existence of a fact consequential to deciding the case more or less probable than without the evidence, and with probability "tested in the light of logic, experience, and accepted assumption as to human behavior." *Patterson*, 192 Ill. 2d at 114-15.

¶62 Here, we note as a threshold matter that the record belies defendant's eye-catching and sweeping summary of his contention: that trial counsel "fail[ed] to investigate his claims that his confession was coerced by the notorious Chicago police detective Kenneth Boudreau." Counsel filed a motion to suppress statements, and litigated it in an evidentiary hearing, so that defendant was indeed able to assert to the court – and to the jury at trial – that his confession was coerced by Detective Boudreau and other officers. In short, defendant's claim that *his* confession was coerced was not only investigated but presented. The substance of defendant's contention is instead that trial counsel did not investigate or introduce evidence of alleged misconduct by Detective Boudreau in *other* cases.

¶63 The State responds that such evidence was inadmissible. We note that defendant was subject to an order *in limine* prohibiting him from making comments at trial regarding "false confessions, police and prosecutorial misconduct, *** and any media coverage similar to the above topics." However, a ruling *in limine* is subject to reconsideration during trial. *People v. Denson*, 2013 IL App (2d) 110652, ¶ 9. It is arguable that the evidence in question does not fall under the motion and order *in limine*; the evidence does not merely attack the criminal justice system or invoke the specter of erroneous convictions but concerns the actions of one of the detectives who questioned defendant in the prelude to his videotaped confession.

¶64 Nonetheless, we agree with the State that the evidence is inadmissible so that an effort by trial counsel to introduce it would have been futile. Firstly, Detective Boudreau's alleged prior misconduct is dissimilar from the instant allegations. Defendant does not allege "punching, slapping, and kicking" or indeed any other violence against himself. Nor are prior allegations that Detective Boudreau had been "taking advantage of suspects with mental impairments or low

IQs" relevant merely because defendant did not complete the 8th grade. We will not infer defendant's "mental impairment or low IQ" from his foreshortened education alone. More importantly, defendant did not provide in his petition, nor does he cite in his brief, any evidence that the allegations against Detective Boudreau resulted in him incurring discipline or a finding of liability or guilt. (One article cited by defendant mentions a single reprimand of Detective Boudreau, but for "failure to get a youth officer into the interrogation room as required when questioning a juvenile suspect" in a case where "Boudreau was not one of the officers accused of physically mistreating any of the suspects." Maurice Possley, Steve Mills & Ken Armstrong, "Veteran detective's murder cases unravel," *Chicago Tribune*, Dec. 17, 2001.) Allegations, however often repeated, that do not come to concrete fruition are inadmissible. Therefore, we find the proposition – that evidence of alleged prior misconduct by Detective Boudreau was admissible regarding alleged threats or promises in the instant case, had trial counsel obtained and sought to introduce such evidence – indisputably lacks legal merit.

¶65 Additionally, we find that the alleged unreasonable assistance did not arguably prejudice defendant. There was ample evidence at trial of Green's kidnapping and murder and the related home invasion of Williams's apartment, and defendant was implicated in these offenses by his confession and the undisputed evidence that Montgomery's white Mercury was at the kidnapping scene at a time when Montgomery had lent defendant the Mercury. Defendant denied the substance of his confession, and at trial gave an alternative explanation of the presence of the Mercury at the scene. The court and jury heard considerable evidence on the admissibility and credibility of the confession and found defendant's account unconvincing. It was undisputed that defendant was in custody over 30 hours extending into three days – though also essentially

undisputed that he was not being questioned during much of that time and had opportunity to sleep – and nearly undisputed that he had little to eat through most of that time. While defendant testified that he repeatedly invoked his right to counsel, ASA Levine, Sergeant Svilar, and the federal agents testified that he did not. The remaining significant conflict concerned whether defendant was induced to give his confession by threats and promises. Defendant testified that ASA Levine, Sergeant Svilar, and Detective Boudreau (possibly along with Detective Winstead, but defendant's testimony varies on that point) made various threats and promises. In particular, he alleged that ASA Levine threatened to charge Montgomery. Sergeant Svilar and ASA Levine denied all allegations that threats or promises were made by them or in their presence.

¶66 Taking the term "arguable" most broadly, it is arguable that the credibility of the three (or four) officials who obtained defendant's confession are inter-related so that evidence casting doubt on Detective Boudreau's interrogation practices could arguably refute the express denials by Sergeant Svilar and ASA Levine. However, the credibility of the confession does not rest entirely on the credibility of the officials who elicited it but was corroborated by the undisputed presence of the Mercury at the kidnapping scene. We find it fanciful that evidence of prior misconduct by Detective Boudreau would also somehow enhance the credibility of defendant's alternative explanation of that presence, which the jury rejected.

¶67 We conclude that the alleged ineffective assistance of trial counsel was neither arguably unreasonable assistance nor arguably prejudicial, so that summary dismissal of defendant's petition was not erroneous. Accordingly, the judgment of the circuit court is affirmed.

¶68 Affirmed.