

2015 IL App (2d) 131143-U  
No. 2-13-1143  
Order filed August 18, 2015

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE	)	Appeal from the Circuit Court
STATE OF ILLINOIS,	)	of Winnebago County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-1184
	)	
FREDRICK LAMBERT, JR.,	)	Honorable
	)	Gary V. Pumilia,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE JORGENSEN delivered the judgment of the court.  
Justices McLaren and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court erred in dismissing the first-stage postconviction petition.

¶ 2 A jury convicted defendant, Fredrick Lambert, Jr., of armed robbery and aggravated battery with a firearm. The trial court sentenced Lambert to concurrent terms of 17 years' imprisonment. The State's theory of the case was that Lambert and Romeo Trammel took money from Charles Wyatt by force and that Trammel shot Wyatt in the leg. This court affirmed Lambert's conviction on direct appeal. *People v. Lambert*, No. 2-11-0513 (2012) (unpublished order under Supreme Court Rule 23).

¶ 3 Lambert filed a postconviction petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2014)). Lambert argued, *inter alia*, that trial counsel provided ineffective assistance where counsel failed to submit readily available surrebuttal evidence concerning Lambert's alibi. The trial court summarily rejected the petition, stating that Lambert's arguments could have been raised on direct appeal and that, in any case, they were frivolous. Lambert appealed.

¶ 4 On appeal, the State concedes that the ineffective-assistance claim could *not* have been raised on direct appeal; the supporting documentation was not part of the trial record. It maintains, however, that the issue is frivolous and patently without merit. For the reasons that follow, we disagree that the issue was frivolous, and we remand for second-stage proceedings.

¶ 5 I. BACKGROUND

¶ 6 On April 1, 2008, Charles Wyatt was shot in the leg. The State's theory of the case was that Lambert and Trammel stole money from Wyatt, a struggle ensued, and Trammel shot Wyatt in the leg. Lambert presented an alibi defense, arguing that Wyatt identified the wrong man. Lambert and his mother each testified that they were together the entire day on the other side of town.

¶ 7 A. Trial: The State's Case

¶ 8 Charles and Lavonne Wyatt each testified that, on April 1, 2008, in the early afternoon, they returned home from a grocery-shopping trip with their two-year-old daughter. They parked their car in front of their house at 828 Hovey Avenue in Rockford. Lavonne went into the house, bringing her daughter and some of the groceries. She noticed a car parked on the street, but she did not recognize the car or the two male occupants. She saw Charles walk toward the car and ask, "What's up?"

¶ 9 Charles recognized Lambert, the driver in the car. He recently had fought with Lambert's uncles over guns and money. Charles did not know Trammel, the passenger. After Charles greeted Lambert and Trammel, Lambert and Trammel each drew a gun. Trammel got out of the car and told Charles to "give it up." One of the men reached into Charles's front pocket and took \$20. At trial, Charles could not remember which of the men took the money, but earlier he had told police that it was Lambert. After taking the \$20, Lambert reached into Charles's back pocket. Charles smacked Lambert's hand away and ran toward the house with the intention of getting a weapon.

¶ 10 At that time, Lavonne came outside to retrieve more groceries. She saw Charles running toward the house and Trammel following after him with a gun. She also saw Lambert's face. She acknowledged that her main focus at that time was getting back into the house to keep her daughter safe, but she stated that she *did* see the perpetrators' faces. She went back inside, and Charles ran to the door to shut her in the house. Charles remained outside and continued to struggle with Trammel and Lambert.

¶ 11 Trammel hit Charles on the head with the pistol grip, causing a head wound. Charles tried to take Trammel's gun. The gun discharged a bullet into Charles's thigh. Charles saw Trammel run back into the car. Trammel and Lambert drove away. Lavonne then drove Charles to the hospital.

¶ 12 None of the State's forensic evidence tied Lambert to the crime. However, Charles, who knew Lambert through dealings with Lambert's uncles, identified Lambert in a photo line-up. Lavonne, who had no prior acquaintance with Lambert, also identified Lambert in a photo line-up.

¶ 13 As to Charles's credibility, Charles admitted that he had prior convictions for manufacturing and delivering crack cocaine, domestic battery, and violating an order of protection. Additionally, Charles changed his story twice. Immediately after the shooting, Charles told police that Lambert was involved. Then, six months later, Charles recanted in a written statement. He wrote: "I swear that Fredrick Lambert, Junior, was not involved in the robbery or shooting of me on April 1, 2008." Finally, at trial, Charles came back to his original position, testifying that Lambert *was* involved. Charles explained his recantation, stating that Lambert's mother asked him to do it and that Lambert's family used "a little intimidation." Charles feared for his own family, and he wrote the statement in the hope that the case would be dismissed.

¶ 14 **B. Trial: Defendant's Case**

¶ 15 Willie Rosser, Lambert's mother, testified to Lambert's alibi. She stated that, during the time in question, Lambert lived with her at 629 Score Street in Rockford. (Lambert was then 18 years old.) Score Street was on the other side of town as compared to Hovey Avenue, where the shooting took place. That day, she and Lambert went grocery shopping together. Additionally, they "Sat around. Joked around." Aside from the trip to the grocery store, Lambert did not leave the house until 7:30 or 8 p.m., well after the time of the afternoon shooting. Rosser was certain that Lambert was inside her home during the time of the shooting.

¶ 16 Rosser denied coercing Charles to recant. Rather, she simply spoke to Charles, asking him "to tell the truth." Charles admitted to her that Lambert was not involved, and he told her that he would recant.

¶ 17 As to Rosser's credibility, Rosser admitted that she had three prior convictions for retail theft and one prior conviction for obstructing justice (wherein she lied to a police officer). As

would become an issue in the instant postconviction petition, one of those convictions for retail theft occurred more than 10 years prior, and the State did not present clear evidence of the applicable release date. (As such, per *People v. Montgomery*, 47 Ill. 2d 510 (1971), it is arguable that the third retail-theft conviction should not have been admitted.)

¶ 18 The State also tried to discredit Rosser by eliciting testimony that, even though Lambert had three different attorneys during the course of the case, Rosser did not tell the first two attorneys that she could be an alibi witness. Excerpts of the State's attempts to elicit the testimony and Rosser's responses are as follows:

“State: Did you tell [attorney] Pat Braun that you recalled Ricky Lambert was with you?

Defense: Objection [Then, in a sidebar:] What's she gonna do? Call Pat Braun then as a witness?

\*\*\*

State: Your Honor, here is the thing. It's her credibility. She just came up with this alibi once it didn't work to threaten [Charles], and that's my argument. \*\*\*.

\*\*\*

Defense: I'm the first attorney who's pressed this thing for trial.

\*\*\*

Court: Well, she's already said she was not in any contact with either the PD or Braun. Okay. The Objection is overruled. Proceed.

\*\*\*

State: Did you ever tell Patrick Braun that you distinctly remembered Ricky being with you from noon to 1 p.m. on April 1, 2008?

Rosser: I really didn't talk to Patrick Braun.

State: So that's a 'no?'

Rosser: No.

\*\*\*

Defense: Okay. Have the lawyers ever tried to contact you personally?

Rosser: What lawyers?

Defense: Or—any of his previous lawyers.

Rosser: No. Once again, my husband usually deals with this. He pay [sic] for the lawyers. He...”

¶ 19 Next, Lambert testified to his alibi. He stated that, during the time in question, he and his younger brothers lived with Rosser. On the day of the offense, he awoke at 8 or 9 a.m. He and Rosser went grocery shopping, as they did the first day of every month. Other than that, he remained “at the crib all day.” He was inside the house during the time of the shooting. He did not see Charles at all that day. He did not leave the house until 8 p.m. that night.

¶ 20 As to Lambert's credibility, Lambert admitted that he had a juvenile record, which included retail- and felony-theft adjudications. Additionally, as is relevant to the instant petition, the State sought to undermine Lambert's alibi defense by showing that Lambert did not live with his mother during the time in question.

¶ 21 Specifically, the State sought to admit evidence of two instances where Lambert reported his address as 1506 Birch Court, the home of his uncle, rather than 629 Score Street, the home of his mother. The first instance occurred four months before the shooting, on January 7, 2008. There, on a bond-out sheet from a 2007 contempt case (No. 07-CM-6965), Lambert provided his uncle's Birch Court address (exhibit Nos. 17 and 17(a) (a photocopy of the same)). The second

instance occurred on April 22, 2008, in conjunction with Lambert's arrest for the instant shooting. There, in a booking report, Lambert again provided his uncle's Birch Court address (exhibit No. 21).

¶ 22 Lambert questioned the relevance of the documents. The State responded that the evidence was "not collateral. It's the defendant's alibi. I don't know how that's more material." Further, it argued: "[I]t also goes to [Lambert] and his mother's credibility, and they were the ones to testify to that alibi, so it goes to impeachment of both of those witnesses, and they—neither one of them have stated he was just staying there for the night." Following argument, the trial court admitted exhibit Nos. 17, 17(a), and 21. The jury then received the evidence, including the testimony of two police officers who confirmed that Lambert himself, as opposed to another person, provided the Birch Court address when filling out the documents.

¶ 23 In surrebuttal, Ashley Kitchen testified regarding Lambert's address. She stated that she resides at the Birch Court address with Lambert's uncle. Lambert's uncle is the father of her three children. Lambert has never lived with them. As to any potential bias, Kitchen acknowledged that Lambert was "like a nephew" to her.

¶ 24 C. Trial: Closing Argument

¶ 25 During closing argument, the State referred to the question of Lambert's correct residential address. The State attempted to tie the soundness of Lambert's alibi to the question of his correct residential address:

"Did the defendant live on Score Street? Did the defendant live on Birch Court? What we know for sure is somewhere in all of here there was a lie at some point. Is it truthful he lived at 629 Score *and* wasn't there [at the crime scene] and that he was untruthful with the court document and the booking person or is his testimony untrue that

he was at Score Street? That's a credibility issue for you to decide. Either way, the defendant hasn't been consistent as to where he was living around the date of this offense." (Emphasis added.)

Defense counsel focused on Lambert's location on the day in question, as opposed to long-term residence. As such, it did not address exhibit Nos. 17, 17(a), and 21:

"What Miss Rosser and my client are saying is so rational. I [Rosser] lived at 629 Score Street. This is my son. My son was staying with me at 629 Score Street on that date, April Fools Day, 2008, an easy enough date to remember."

And:

"My client and his family have a simple story. On April 1, 2008, he was at his mother's house at 629 Score Street. The only evidence that he was not comes from a fellow you cannot believe [Charles]."

In reply, the State again attempted to tie the soundness of the alibi to the question of Lambert's correct residential address:

"This is definite that the defendant lied to someone. We just don't know was he lying on the stand saying he lived at 629 Score, or did he lie to the booking agent saying he was living on Birch Court[?]"

And:

"The testimony of Miss Rosser:

Her son was living with her on Score Street. Well, that contradicts what her son said to a booking agent and in a court document. So is she saying her son [is] a liar when he said those things? What's the truth? Where is the credibility?"

And:

“Defendant never lived with his uncle. That’s what [Kitchen] told us. Well, the uncle’s address is what the defendant told the booking person and what he put on a court document. So is this not true or are those documents from the defendant not true? People know where they live. People know where they live.”

¶ 26 Following deliberation, the jury returned a guilty verdict. The trial court sentenced Lambert to concurrent terms of 17 years’ imprisonment.

¶ 27 D. Direct Appeal

¶ 28 On direct appeal, Lambert argued that trial counsel was ineffective for failing to raise a *Montgomery* objection to the admission of his juvenile record and that the trial court erred in allowing him to be thus impeached. This court rejected Lambert’s arguments. *Lambert*, 2012 IL App (2d) 110513-U, ¶ 1.

¶ 29 E. Postconviction Proceedings

¶ 30 On July 24, 2013, Lambert filed the instant postconviction petition. He alleged 12 claims of ineffective assistance, two of which appellate counsel has set apart for this court and one of which we will later focus upon in our analysis.<sup>1</sup> That is, Lambert argued that trial counsel was ineffective for failing to introduce surrebuttal evidence of an additional bond slip (dated March 12, 2008), which would have been defense exhibit No. 2. This bond slip involved the same contempt case as the January 2008 bond slip in exhibits 17 and 17(a) (No. 07-CM-6965).

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<sup>1</sup> The second claim set apart by appellate postconviction counsel alleged that trial counsel was ineffective for failing to raise a *Montgomery* objection to the admission of one of his mother’s three retail-theft convictions. Additionally, appellate postconviction counsel alleged that appellate counsel on direct appeal was ineffective for failing to raise the argument and/or trial counsel had committed plain error.

Importantly, in the March 2008 bond slip, which was drafted closer in time to the offense, Lambert provided his mother's Score Street address. In support of his petition, Lambert attached the March 2008 bond slip that listed his address as 629 Score Street. Additionally, Lambert submitted a statement, styled as an affidavit but not notarized, wherein he represented that he told his attorney about the March 2008 bond slip that listed his address as 629 Score Street. He also explained that he only provided the incorrect Birch Court address because he did not want his mother to be notified of his trouble with police.

¶ 31 On October 9, 2013, the trial court dismissed Lambert's postconviction petition. It stated in its written order that claims against appellate counsel (for failing to raise trial counsel's errors) were frivolous and patently without merit. It further stated that "claims relating to trial counsel \*\*\* could have been raised on appeal and \*\*\* are also frivolous and patently without merit." Additionally, in its oral pronouncement, it again stated:

"With regard to those allegations that relate to the trial counsel, all of these were either of record or known or both to the defendant at the time of the [direct] appeal, indeed at the time of trial. They could have been raised on appeal but were not. There's no reason for relaxed waiver and each of those is denied."

This timely appeal followed.

¶ 32 II. ANALYSIS

¶ 33 Appellate postconviction counsel argues that Lambert's postconviction claims should have survived the first stage of the proceedings. We concentrate on Lambert's claim that trial counsel provided ineffective assistance by failing to introduce Lambert's March 2008 bond slip that listed Lambert's address as 629 Score Street. The March 2008 bond slip was drafted just three weeks prior to the instant offense. For the reasons that follow, we agree that this

ineffective-assistance claim should have survived the first stage. As such, we remand the entire petition back for second-stage proceedings.

¶ 34 The Post-Conviction Hearing Act provides a means by which a defendant may assert that his or her conviction was the result of a substantial denial of a constitutional right. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). A postconviction action is a collateral attack on the proceedings. *People v. Tate*, 2012 IL 112214, ¶ 8. Issues raised and decided on direct appeal are barred *res judicata*. *Id.* Issues that could have been raised on direct appeal but were not are forfeited. *Id.*

¶ 35 In noncapital cases, the postconviction proceeding contains three stages. *Id.* at 9. At the first stage, the trial court independently reviews the petition to determine if, taking the allegations as true, the petition is “frivolous or is patently without merit.” *Id.* (quoting *Hodges*, 234 Ill. 2d at 10). A petition is frivolous or patently without merit only if it has no *arguable* basis in either fact or law. *Id.* The threshold for surviving the first stage is low. *Id.* Most petitions are drafted by persons with little legal knowledge or training, and the trial court acts strictly in an administrative capacity to screen out those petitions that are obviously without substance or merit. *Id.*

¶ 36 If a petition survives the first stage, it advances to the second stage. In the second stage, where a defendant is indigent, counsel will be appointed to present the petition in a proper legal framework. 725 ILCS 5/122-4 (West 2008). The State must answer the petition or move to dismiss it. 725 ILCS 5/122-5 (West 2008). The trial court then determines whether the petition makes a “substantial showing of a constitutional violation.” *Tate*, 2012 IL 112214, ¶ 10 (quoting *People v. Edwards*, 197 Ill. 2d 239, 246 (2001)). If the petition survives the second stage, it advances to the third stage. In the third stage, the trial court conducts an evidentiary hearing. *Id.*

Where, as here, the petition did not advance to the third stage, we review the trial court's dismissal *de novo*. *Id.*

¶ 37 As a threshold matter, the State argues that, regardless of the petition's contents, we can affirm the first-stage dismissal because Lambert did not provide sufficient documentary support. A postconviction petition "shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." 725 ILCS 5/122-2 (West 2014). The State notes that, here, Lambert submitted an "evidentiary affidavit" that was not notarized. (The trial court did not mention the lack of notarization in dismissing the petition.)

¶ 38 Ten days after the State filed its brief, the supreme court held that the failure to notarize a statement styled as an affidavit does not provide a basis for dismissing a first-stage petition. *People v. Allen*, 2015 IL 113135, ¶ 34. In such a case, the court should simply look at the statement to see if it shows that the petition's allegations are capable of corroboration. *Id.* To do so, the statement should identify the sources, character, and availability of the evidence supporting the petition's allegations. *Id.* A statement styled as an affidavit may satisfy these purposes. *Id.* While not an actual affidavit in its present form, it qualifies as "other evidence" under section 122-2 of the Post-Conviction Hearing Act. *Id.* (And, appointed counsel may ensure notarization when preparing for the second-stage proceedings. *Id.* ¶ 35.)

¶ 39 As in *Allen*, Lambert's statement qualifies as "other evidence" that shows the petition's allegations are capable of corroboration. In any case, even without the statement, Lambert attached sufficient documentary support, because he attached the March 2008 bond slip itself. Lambert clearly attached sufficient documentary support to survive the first stage of the postconviction proceedings.

¶ 40 Next, we note that the trial court erred in stating that Lambert forfeited his claim that trial counsel provided ineffective assistance by failing to introduce the March 2008 bond slip. Information concerning this alleged error was not contained in the trial record, and, therefore, the issue could not have been raised on direct appeal. *Tate*, 2012 IL 112214, ¶ 14. The State concedes that the trial court erred in stating that this issue was forfeited. The State maintains, however, that the ineffective-assistance claim is, nevertheless, insufficient to survive the first-stage of the postconviction proceeding.

¶ 41 In the end, to prevail on an ineffective assistance claim, a defendant must show both that counsel's performance fell below an objective standard of reasonableness and the deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). At the first-stage of the postconviction proceedings, however, a petition must show only that it is *arguable* that counsel's performance fell below an objective standard of reasonableness and that the defendant was prejudiced. *Tate*, 2012 IL 112214, ¶ 19 (quoting *Hodges*, 234 Ill. 2d at 17). For the reasons that follow, here, it is *arguable* that both prongs of the *Strickland* test will be met as the case advances to the later stage(s) of the postconviction proceedings.

¶ 42 A. Deficient Performance

¶ 43 To establish deficient performance, a defendant must overcome the strong presumption that counsel's action or inaction was not the result of sound trial strategy. *People v. Perry*, 224 Ill. 2d 312, 341-42 (2007). Here, the State contends that Lambert would never be able to show that counsel's failure to introduce the March 2008 bond slip was anything other than sound trial strategy. That is, counsel may have reasoned that introducing the March 2008 bond slip would only have drawn attention to "another offense [and] would have highlighted [Lambert's] distinct and *further* criminal activity." (Emphasis added.) Additionally, the State, citing *People v.*

*Harmon*, 2013 IL App (2d) 120439, ¶¶ 31-33, argues that the March 2008 bond slip that listed Lambert's address as 629 Score street was cumulative to Kitchen's testimony that Lambert did not live at Birch Court, and, therefore, the inaction cannot be considered unreasonable.

¶ 44 We reject each of the State's arguments. First, the March 2008 bond slip would not have drawn attention to *further* criminal activity. The March 2008 bond slip concerned the *same* contempt case, No. 07-CM-6965, as was already introduced to the jury through exhibit Nos. 17 and 17(a). True, allowing Lambert to explain that he lied when he provided the police the Birch Court address *may* have hurt Lambert's credibility. However, this hit to Lambert's credibility was likely a necessary evil. That is, Lambert *wanted* the jury to believe that he lied when he told the police that he lived at Birch Court. This made his alibi more likely and this is why he called Kitchen to testify that he never lived at Birch Court. Additionally, we cannot find *per se* unbelievable Lambert's explanation that he, as an eighteen-year-old young man, did not want his mother to be disappointed should she be notified of his trouble with police as a result of his providing the Score Street address. As such, it is far from clear that the introduction of the March 2008 bond slip would have hurt Lambert's case.

¶ 45 Likewise, we cannot find the March 2008 bond slip to be merely cumulative to Kitchen's testimony. Evidence is considered cumulative when it adds nothing to what is already before the jury. *People v. Gabriel*, 398 Ill. App. 3d 332, 351 (2010). Kitchen testified only that Lambert did not live at Birch Court. She did not testify that Lambert *did* live at Score Street. The former only rebuts the State's position that Lambert lived at Birch Court. The latter would both rebut the State's position *and* corroborate Lambert's position that he lived at Score Street. Thus, the March 2008 bond slip would have provided additional information to the jury.

¶ 46 Moreover, the bond slip was the stronger piece of evidence. Unlike *Harmon*, upon which the State relies, the evidence at issue here was not uncertain. See *Harmon*, 2013 IL App (2d) 120439, ¶ 32 (in addition to being cumulative, the evidence at issue concerned testimony from a witness who, “at best, [had an] indistinct recollection”). Whereas Kitchen’s truthfulness was called into question due to the bias of familial affection, the March 2008 bond slip was simply a dry government document drafted close in time, but still prior to, the offense. As explained by Lambert’s appellate postconviction counsel, the March 2008 bond slip’s “juxtaposition to the prosecution’s analogous evidence [exhibit Nos. 17 and 17(a)] would have provided a distinctly efficacious means by which to directly negate their rebuttal case.”

¶ 47 So long as it is arguable that counsel’s inaction was *not* reasonable trial strategy, it is inappropriate to reject a *first-stage* petition on that basis. *Tate*, 2012 IL 112214, ¶ 22. Here, an argument can be made that the March 2008 bond slip would have helped Lambert’s case with very little downside. It is, therefore, at least *arguable* that counsel’s failure to introduce the evidence cannot be considered sound trial strategy and, instead, caused his performance to fall below an objective standard of reasonableness.

¶ 48 B. Prejudice

¶ 49 To establish prejudice, a defendant must show that there is a reasonable probability the outcome of the trial would have been different had counsel not performed deficiently. *Strickland*, 466 U.S. at 687-89. The defendant need not prove that the error more likely than not altered the outcome of the case. *Id.* “The result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome.” *Id.* at 694. As such, the reasonable-probability standard is met if the error is sufficient to undermine confidence in the

outcome of the trial. *Id.* at 693-94. And, again, at the first-stage of postconviction proceedings, a defendant need only show it is *arguable* that the alleged error undermined confidence in the outcome of the trial. *Tate*, 2012 IL 112214, ¶ 19.

¶ 50 This case turned on Lambert and his mother's credibility as compared to Charles and Lavonne's credibility. There was no physical evidence, and Lambert made no inculpatory statements. True, Lambert and Rosser were not perfect witnesses. They each provided self-serving testimony, and they each carried criminal records. In addition, Rosser did not notify Lambert's first two attorneys that she could serve as an alibi witness (although she explained to the court that she did not speak with the first two attorneys at all, and she did not become involved in the case until just before trial).

¶ 51 However, Charles and Lavonne were also problematic witnesses. Charles had a more substantial criminal history than either Lambert or Rosser. While Charles did not have a prior conflict with Lambert, he did have prior conflicts with Lambert's family members. Moreover, Charles twice changed his position as to whether Lambert was indeed one of the perpetrators. Lavonne had no known bias (other than to support her husband), and she testified that she had a clear view of Lambert's face. However, she acknowledged that her main concern during the incident was, understandably, securing her daughter's safety (the inference being that she was not at that time concerned with committing to memory the facial features of the perpetrators, whom she never had seen before that day). Of course, despite these weaknesses, it is possible that the jury found Charles and Lavonne highly credible in their demeanor.

¶ 52 Still, with seemingly weak witnesses on both sides, it is at least arguable that any information tending to tip the jury's credibility assessment had the potential to effect the outcome of the trial. Here, the State stressed the relevance of the January 2008 bond slip when

seeking to admit it: “[The information contained on the bond slip] is not collateral. It’s defendant’s alibi. I don’t know how that’s more material. \*\*\* [I]t also goes to the defendant and his mother’s credibility, and they were the ones testifying to that alibi, so it goes to impeachment of both of those witnesses, and they—neither one of them have stated that he was just staying there for the night.”

¶ 53 Additionally, in closing argument, the State repeatedly linked the veracity of Lambert’s alibi to the accuracy of the address listed on the bond slip:

“Did the defendant live on Score Street? Did the defendant live on Birch Court? What we know for sure is somewhere in all of here there was a lie at some point. Is it truthful he lived at 629 Score *and* wasn’t there [at the crime scene] and that he was untruthful with the court document and the booking person or is his testimony untrue that he was at Score Street? That’s a credibility issue for you to decide. Either way, the defendant hasn’t been consistent as to where he was living around the date of this offense.” (Emphasis added.)

And:

“This is definite that the defendant lied to someone. We just don’t know was he lying on the stand saying he lived at 629 Score, or did he lie to the booking agent saying he was living on Birch Court[?]”

And:

“The testimony of Miss Rosser:

Her son was living with her on Score Street. Well, that contradicts what her son said to a booking agent and in a court document. So is she saying her son [is] a liar when he said those things? What’s the truth? Where is the credibility?”

And:

“Defendant never lived with his uncle. That’s what [Kitchen] told us. Well, the uncle’s address is what the defendant told the booking person and what he put on a court document. So is this not true or are those documents from the defendant not true? People know where they live. People know where they live.”

Submitting the March 2008 bond slip could have neutralized this line of argument by the State.

¶ 54 The failure to introduce the March 2008 bond slip may have left the jury with the mistaken impression that, when Lambert acted without anticipation of the future crime he would commit and the alibi he would need, Lambert stated that he lived at Birch Court. However, the March 2008 bond slip would have shown that the bond slips, whether completed in self-interest or not, were unreliable sources of information by which to establish Lambert’s correct address. Additionally, the failure to submit the March 2008 bond slip resulted in a lost opportunity to corroborate Lambert’s version of events, including that he lived with his mother in the month preceding the offense (even if he had lived with his uncle at some point in the past). For these reasons, Lambert was arguably prejudiced by counsel’s inactions.

¶ 55 In sum, although we recognize that our review is *de novo*, we cannot conclude that the trial court sufficiently considered Lambert’s ineffective-assistance claim. The trial court incorrectly stated that the claim was forfeited. And, the State’s arguments in support of its position that the claim was, nevertheless, frivolous, are flawed. The March 2008 bond slip would not have alerted the jury to *additional* criminal activity, and the March 2008 bond slip was not cumulative to Kitchen’s testimony. As such, it is arguable that the failure to introduce the March 2008 bond slip cannot be considered a matter of sound trial strategy. Further, because the case turned on credibility, Lambert was arguably prejudiced by counsel’s failure to introduce a

piece of evidence that would have both neutralized the State's attack and corroborated his version of events. Lambert's petition should have proceeded to the second stage.

¶ 56 As our above reasoning is dispositive, we need not address the viability of Lambert's remaining claims. We express no opinion as to whether the instant ineffective-assistance issue, or any other issue, should survive the second stage.

¶ 57

### III. CONCLUSION

¶ 58 For the aforementioned reasons, we reverse the trial court's judgment. We remand to the trial court for further proceedings.

¶ 59 Reversed and remanded.