SIXTH DIVISION
July 18, 2014

No. 1-10-2605

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County.
	)	
v.	)	No. 01 CR 27693
	)	
JAMES HOUSE,	)	Honorable
	)	Clayton J. Crane,
Petitioner-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: Second-stage dismissal of assertions of ineffective assistance of appellate counsel raised in petitioner's postconviction petition affirmed, where petitioner failed to make a substantial showing of a constitutional violation.

¶ 2 After a jury trial, petitioner-appellant, James House, was convicted of first degree murder and sentenced to a term of 75 years' imprisonment. On direct appeal, petitioner's conviction was affirmed. *People v. House*, 377 Ill. App. 3d 9 (2007).

¶ 3 Pursuant to the Post-Conviction Hearing Act (720 ILCS 5/122-1 *et seq*. (West 2008)), petitioner thereafter initiated the instant postconviction proceeding by filing a petition contending that—*inter alia*—his appellate counsel provided ineffective assistance by failing to raise on appeal issues involving: (1) the lack of probable cause for petitioner's arrest; and (2) the

admission at trial of improper evidence regarding petitioner's invocation of his right to remain silent. The State responded by filing a motion to dismiss the petition. The circuit court granted the State's motion to dismiss the petition with respect to the assertions of ineffective assistance of appellate counsel, and the matter proceeded to an evidentiary hearing on a single claim of ineffective assistance of trial counsel. The circuit court ultimately granted the State's motion for directed finding as to that claim, and thereafter dismissed petitioner's postconviction petition in its entirety. Petitioner has now specifically appealed from only the dismissal of his postconviction assertions of ineffectiveness of appellate counsel, and for the following reasons we affirm.

¶ 4 I. BACKGROUND

¶ 5 Petitioner was charged by indictment with multiple counts of first degree murder, all of which generally alleged that petitioner shot and killed Isaiah Ewing on June 19, 2001. Prior to trial, petitioner's defense counsel filed a motion to quash arrest and suppress evidence, as well as a motion to suppress petitioner's inculpatory statement to the police. The motion to suppress the statement was later withdrawn by defense counsel "for a number of reasons, including for strategic reasons at this particular point." Thus, this matter proceeded to a hearing with respect to only the motion to quash arrest.

¶ 6 At that hearing, petitioner presented the testimony of Officer Roberto Miranda, Detective Cliff Gehrke, and petitioner's cousin, Tansaney Johnson. Officer Miranda, an officer dispatched out of the 11th district of the Chicago police department, testified that around 2 p.m. on October 31, 2001, he and his partner encountered petitioner and another individual "loitering" in an alley. That alley was located in a neighborhood of Chicago known for high criminal and narcotics activity, and which was subject to a number of citizen complaints. In light of this, Officer

Miranda approached petitioner and the other individual and asked for their names. A "name check" on petitioner revealed an "investigative alert" indicating that detectives from Area 1 of the Chicago police department wanted to speak with him. Petitioner "freely" agreed to accompany Officer Miranda and his partner to District 11, and then "freely" agreed to be transported to the Area 1 police station to speak with the detectives. Officer Miranda testified that he never placed petitioner under arrest, never handcuffed him, and told petitioner multiple times that he was free to leave. Officer Miranda turned petitioner over to detectives at Area 1 and then left.

¶ 7 Detective Gehrke testified that he was assigned to investigate the murder of Mr. Ewing shortly after it occurred on the afternoon of June 19, 2001. Detective Gehrke then went to the ninth floor of the "Ickes" housing project, where he found Mr. Ewing's body and determined that Mr. Ewing had been shot twice in the back of his head. The following day, Detective Gehrke interviewed Mr. Ewing's brother, Aric Solomon. Mr. Solomon indicated that he had last seen Mr. Ewing the previous day around 9 or 10 a.m., when he got into an Oldsmobile driven by petitioner. Petitioner's brother, Cornelius Aaron, was also in the vehicle. Mr. Solomon told Detective Gehrke that he unsuccessfully tried to convince Mr. Ewing not to leave with petitioner because the two had been involved in a conflict regarding a gun. This was the last time Mr. Solomon saw Mr. Ewing alive, as he was murdered a few hours later. Based upon all this information, and the fact that they were the last known people to be seen with Mr. Ewing, Detective Gehrke issued an investigative alert for both petitioner and Mr. Aaron. The alert indicated that the police wanted to speak with those individuals, but did not yet have probable cause to arrest them.

¶ 8 On October 31, 2001, Detective Gehrke had the opportunity to interview both petitioner and Mr. Aaron at the Area 1 police station. Detective Gehrke understood that petitioner had been brought to the police station pursuant to the investigative alert, while Mr. Aaron had been coincidentally arrested that same day by a fugitive unit for an outstanding warrant on an unrelated matter. Prior to the interview with Mr. Aaron, petitioner had not been handcuffed, fingerprinted, processed, and was "not yet in custody." However, Mr. Aaron informed Detective Gehrke that, prior to June 19, 2001, petitioner and Mr. Ewing had been involved in a dispute over a gun. On that date, petitioner, Mr. Ewing, Mr. Aaron, and a fourth individual known as "Main" drove to the Ickes housing project in petitioner's Oldsmobile. On an upper floor, petitioner shot Mr. Ewing twice in the head. Petitioner, Mr. Aaron, and "Main" then left the scene in petitioner's vehicle. After the interview with Mr. Aaron, petitioner was no longer free to leave Area 1.

¶ 9 Finally, Mr. Johnson testified that he was petitioner's cousin and that he was with petitioner on October 31, 2001, when they were approached by two police officers. Petitioner and Mr. Johnson were handcuffed and taken to a police station in order to "run [their] names." They were then handcuffed together to a bench at the police station for 30 minutes, before Mr. Johnson was issued citations for littering and spitting and told to leave. Mr. Johnson admitted that he was a five-time convicted felon, had previously lied about his name and birth date, and had been brought to court to testify by petitioner's mother and sister.

¶ 10 Petitioner rested following the introduction of that evidence, and the State did not present any additional evidence at the hearing. The circuit court then denied petitioner's motion to quash. After noting that Mr. Johnson was a "five-time convicted felon," a relative of petitioner, and was brought to court by petitioner's sister and mother, and after rejecting petitioner's attacks

upon the credibility of Officer Miranda and Detective Gehrke, the circuit court found that petitioner was properly arrested at the police station. Specifically, the circuit court stated:

> "Based on the knowledge that the police officers had after the defendant was at the station, given to them by his cousin implicating the defendant in the murder and once defendant gave an oral statement admitting his participation, he was placed under arrest as evidenced by the arrest report. And at that juncture, the police had probable cause to believe he was in fact the person that shot the victim."

¶ 11 Petitioner also filed a motion *in limine* prior to trial, seeking to preclude the State from introducing any evidence regarding petitioner's refusal to provide a videotaped statement after he had previously implicated himself in an oral statement petitioner provided following his arrest on October 31, 2001. Petitioner contended that the introduction of such evidence would violate his right to remain silent. The State responded by contending that it was only seeking to introduce this evidence "to show the circumstances under which the statement was made and the reason why it's simply an oral statement[.]" The circuit court denied petitioner's motion, concluding that this evidence "goes to the circumstances surrounding the making of the statement, and it's admissible."

¶ 12 The matter then proceeded to a jury trial in February and March of 2007. The trial proceedings and the evidence presented at trial were fully set out in our prior opinion, and need not be fully restated here. See *House*, 377 Ill. App. 3d at 10-15. It is sufficient to note that the evidence at trial included petitioner's oral statement implicating himself in the murder of Mr. Ewing, which he provided after he was arrested at Area 1 and after he had been given his *Miranda* warnings. The State also presented evidence regarding the circumstances surrounding petitioner's subsequent refusal to provide a videotaped version of that statement. The

handwritten statements of Mr. Aaron and Landon Coleman were also introduced into evidence, with the evidence at trial establishing that Mr. Coleman was the individual previously identified only as "Main" by Mr. Aaron that accompanied the other individuals to the Ickes housing project.

¶ 13 At the conclusion of the trial, petitioner was found guilty of first degree murder. Petitioner then filed a posttrial motion for a new trial which argued—*inter alia*—that the circuit court erred in denying both the motion to quash arrest and the motion *in limine*. That motion was denied, and petitioner was sentenced to a term of 75 years' imprisonment.

¶ 14 Petitioner filed a direct appeal from his conviction, in which he raised neither the denial of the motion to quash arrest nor the denial of the motion *in limine*. As noted above, in an opinion entered on October 17, 2007, this court rejected the other issues raised by petitioner and affirmed his convictions. *Id*. at 20.

¶ 15 On July 28, 2008, petitioner filed the instant petition for postconviction relief. Therein, and in a subsequently filed amended petition, petitioner asserted—*inter alia*—that his appellate counsel was ineffective for failing to raise the denial of the motion to quash arrest or the denial of the motion *in limine* as a basis for the reversal of his conviction. The State responded to the petition by filing a motion to dismiss. Therein, the State argued in part that petitioner had failed to meet his burden of showing that he had been provided with ineffective assistance of appellate counsel. The circuit court granted the State's motion to dismiss in part and denied it in part, dismissing the assertions of ineffective assistance of appellate counsel and allowing an evidentiary hearing only as to petitioner's claim that his trial counsel improperly withdrew the motion to suppress his statements for "strategic" reasons.

¶ 16 At that hearing, the circuit court heard testimony from petitioner's trial counsel, who explained her reasons for withdrawing the motion to suppress. The circuit court thereafter granted the State's motion for directed finding as to the claim that petitioner's trial counsel provided ineffective assistance and, thus, dismissed the postconviction in its entirety. Petitioner timely appealed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, petitioner contends only that the circuit court improperly dismissed his postconviction assertions of ineffective assistance of appellate counsel without first holding an evidentiary hearing as to those issues. We disagree.

¶ 19 A. Legal Framework and Standard of Review

¶ 20 As noted above, petitioner filed the instant petition pursuant to the Post-Conviction Hearing Act. 720 ILCS 5/122-1 *et seq*. (West 2008). Our supreme court has summarized the procedures to be employed in evaluating such a petition as follows:

> "The Post–Conviction Hearing Act *** provides a method by which persons under criminal sentence in this state can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution or both. [Citations.] A postconviction action is not an appeal from the judgment of conviction, but is a collateral attack on the trial court proceedings. ***
>
> In a noncapital case, a postconviction proceeding contains three stages. At the first stage, the circuit court must independently review the petition, taking the allegations as true, and determine whether ' "the petition is frivolous or is patently without merit.' " [Citation.] A petition may be summarily dismissed as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact. [Citation.] ***

> If the circuit court does not dismiss the petition as 'frivolous or * * * patently without merit' [citation], the petition advances to the second stage, where counsel may be appointed to an indigent defendant [citation], and where the State, as respondent, enters the litigation [citation]. It is at this point, not the first stage, where the postconviction petition can be said to be at issue, with both sides engaged and represented by counsel. [Citation.] At this second stage, the circuit court must determine whether the petition and any accompanying documentation make 'a substantial showing of a constitutional violation.' [Citation]. If no such showing is made, the petition is dismissed. [Citation]. If, however, a substantial showing of a constitutional violation is set forth, the petition is advanced to the third stage, where the circuit court conducts an evidentiary hearing. [Citations]." *People v. Tate*, 2012 IL 112214, ¶¶ 8-10.

¶ 21 Here, petitioner's initial and amended petitions were prepared and filed by counsel. After the circuit court found that the petition was sufficient to withstand an initial review, this matter proceeded to the second stage. "At the second stage of postconviction proceedings, the State may file a motion to dismiss the petition and the postconviction court must determine whether the petition and any accompanying documents make a substantial showing of a constitutional violation." *People v. Graham*, 2012 IL App (1st) 102351, ¶ 31. At this stage, "[t]he postconviction court takes 'all well-pleaded facts that are not positively rebutted by the trial record' as true." *Id.* (quoting *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006)). The dismissal of a postconviction petition at the second stage is reviewed *de novo* (*Graham*, 2012 IL App (1st) 102351, ¶ 31), and we may affirm such a second-stage dismissal "on any basis supported by the record." *People v. Stoecker*, 384 Ill. App. 3d 289, 292 (2008).

¶ 22 We also note that the only issues raised on appeal by petitioner involve the allegations of ineffective assistance of appellate counsel that were dismissed by the circuit court at the second stage. A claim of ineffective assistance of counsel is judged according to the two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Lawton*, 212 Ill. 2d 285, 302 (2004). In order to obtain relief under *Strickland*, a petitioner must prove defense counsel's performance fell below an objective standard of reasonableness and that this substandard performance caused petitioner prejudice by creating a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *People v. Wheeler*, 401 Ill. App. 3d 304, 313 (2010).

¶ 23 While petitioner must establish both prongs of this two-part test, a reviewing court need not address counsel's alleged deficiencies if petitioner fails to establish any prejudice. See *Strickland*, 466 U.S. at 687; *People v. Edwards*, 195 Ill. 2d 142, 163 (2001). Our supreme court has held that "*Strickland* requires actual prejudice be shown, not mere speculation as to prejudice." *People v. Bew*, 228 Ill. 2d 122, 135 (2008). A petitioner has the burden of establishing any such prejudice. *People v. Glenn*, 363 Ill. App. 3d 170, 173 (2006). Thus, at the second stage of these postconviction proceedings, petitioner had the burden of making a substantial showing that a reasonable probability exists that the outcome of the proceedings would have been different had his counsel's performance been different. *People v. Harris*, 206 Ill. 2d 293, 307 (2002).

¶ 24 Finally, it is recognized that "the *Strickland* standard applies to claims of ineffective assistance of appellate counsel. [Citation.] A defendant who argues that appellate counsel was ineffective for failing to argue an issue must show that the failure was objectively unreasonable, and that the defendant was prejudiced by the decision. [Citation.] Appellate counsel is not

required to brief every conceivable issue on appeal, and counsel is not incompetent for choosing not to raise meritless issues. [Citation.]" *People v. Maclin*, 2014 IL App (1st) 110342, ¶ 32. "Accordingly, unless the underlying issue has merit, there is no prejudice from appellate counsel's failure to raise an issue on appeal." *People v. Lacy*, 407 Ill. App. 3d 442, 457 (2011).

¶ 25 B. Discussion

¶ 26 We now turn to a review of petitioner's specific claims that the circuit court improperly dismissed his assertions of ineffective assistance of appellate counsel without holding an evidentiary hearing.

¶ 27 1. Motion to Quash

¶ 28 We first consider petitioner's assertion that his appellate counsel was ineffective for failing to raise the issue of the circuit court's denial of his motion to quash, because the police lacked sufficient probable cause to place petitioner under arrest. As discussed above, our resolution of this issue requires a consideration of the underlying merits of petitioner's motion to quash, and whether any possible challenge to the denial of that motion would have been successful on direct appeal.

¶ 29 The ruling of a trial court on a motion to quash an arrest and suppress evidence frequently presents mixed questions of fact and law. While the ultimate legal ruling is reviewed *de novo*, great deference is afforded to the circuit court's factual findings and we will reverse such findings only if they are manifestly erroneous. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). In ruling on a motion to quash or suppress, it is the circuit court's role to determine the credibility of witnesses and the weight to be given their testimony. *People v. Sutton*, 260 Ill. App. 3d 949, 956 (1994).

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

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

Finally, we note that "[i]n determining whether the trial court correctly found probable cause to arrest the accused, a reviewing court is not limited to the evidence presented at the circuit court's pretrial suppression hearing, but may also consider evidence that was offered at the defendant's trial." *People v. Sims*, 167 Ill. 2d 483, 500 (1995).

¶ 31 On appeal, petitioner first contends that it was "crucial that appellate counsel raise the probable cause issue on appeal" because the circuit court misstated the evidence in denying the motion to quash. Petitioner contends that, before denying that motion, the circuit court specifically noted its understanding that petitioner was not arrested until after he provided an inculpatory statement. Indeed, the record does reflect that the circuit court misstated the evidence in two respects, by indicating: (1) it was petitioner's cousin that provided a statement

implicating petitioner at the police station rather than petitioner's brother, Mr. Aaron; and (2) defendant was not placed under arrest until after he provided his own oral statement to the police, when Detective Gehrke actually testified that petitioner was "no longer free to leave" after Mr. Aaron's statement.

¶ 32 Nevertheless, it is well recognized that a reviewing court may affirm a circuit court's ruling on a motion to quash arrest and suppress evidence "on any basis appearing in the record, whether or not the [circuit] court relied on that basis or its reasoning was correct[.]" *People v. Daniel*, 2013 IL App (1st) 111876, ¶ 37. Thus, we will determine the merits of the denial of petitioner's motion to quash without reliance upon the circuit court's misstatements of the evidence, in order to determine if petitioner was prejudiced by the failure of appellate counsel to raise this issue on appeal.

¶ 33 While we disregard the circuit court's misstatements of the evidence, we do note that in denying petitioner's motion to quash, the circuit court found Mr. Johnson's testimony regarding petitioner's arrest to be incredible and relied upon the testimony of Officer Miranda and Detective Gehrke. It was the circuit court's role to determine the credibility of the witnesses and the weight to be given their testimony (*Sutton*, 260 Ill. App. 3d 956), and we see no reason why that credibility determination would have been overturned upon direct appeal. As such, we must consider whether the police had probable cause to arrest petitioner after he voluntarily accompanied Officer Miranda to the police station and after Mr. Aaron made his statement implicating petitioner.

¶ 34 The testimony at the hearing also established that, prior to petitioner's ultimate arrest at the police station: (1) the police were aware that on the afternoon of June 19, 2001, Mr. Ewing had been fatally shot twice in the back of the head on the ninth floor of the Ickes housing project;

(2) the following day, Mr. Solomon told the police that Mr. Ewing and petitioner had an ongoing conflict over a gun, and that Mr. Solomon last saw Mr. Ewing alive the previous morning when he drove off in an Oldsmobile occupied by petitioner and Mr. Aaron; and (3) Mr. Aaron had provided a statement in which he indicated that Mr. Ewing and petitioner had a conflict regarding a gun, Mr. Ewing had accompanied petitioner, Mr. Aaron, and Mr. Coleman to the Ickes project in an Oldsmobile on June 19, 2001, and petitioner shot Mr. Ewing twice in the head "upstairs" at that location.

¶ 35 As noted above, probable cause for an arrest exists when the facts known to an officer are sufficient to lead a reasonably cautious person to believe that the person arrested has committed a crime. *Jackson*, 232 Ill. 2d at 275. This determination is based upon the totality of the circumstances, concerns factual, practical, and commonsense considerations, and the circumstances surrounding the arrest need only demonstrate the probability of criminal activity rather than proof beyond a reasonable doubt. *Id*. In light of all the information known to the police officers at the time of petitioner's arrest, we conclude that petitioner's arrest was in fact supported by sufficient probable cause.

¶ 36 Indeed, the State correctly points out that the statement of a codefendant or informant may provide probable cause for an arrest of a defendant. See *People v. Harris*, 294 Ill. App. 3d 561, 566 (1998); *People v. Johnson*, 368 Ill. App. 3d 1073, 1081 (2006). The reliability of any such statement "is enhanced: (1) if it contains a statement against penal interest; (2) if it is shown that the statement was not made pursuant to promises of leniency or other inducements; and (3) if there is independent verification of substantial parts of the statement by facts learned through police investigation." *Harris*, 294 Ill. App. 3d at 566. Despite petitioner's arguments to the

contrary, we find that each of these factors supports relying upon Mr. Aaron's statement to support probable cause for petitioner's subsequent arrest.

¶ 37 First, we conclude that Mr. Aaron made a statement against penal interest. While he did not implicate himself as being directly responsible for Mr. Ewing's murder, Mr. Aaron's statement could be used to support his own conviction for that crime under a theory of accountability. "In determining a defendant's legal accountability, the trier of fact may consider the defendant's presence during its commission, the defendant's continued close association with other offenders after its commission, the defendant's failure to report the crime, and the defendant's flight from the scene." *People v. Morris*, 2013 IL App (1st) 110413, ¶ 56. In his statement, Mr. Aaron indicated that he was present at the scene of the murder, he fled from that scene with petitioner, he never reported the crime until he was arrested on a separate matter, and that it was his own brother that shot Mr. Ewing. While Mr. Aaron's statement may not alone have sufficed for a conviction under an accountability theory, it would " 'constitute circumstantial evidence which may tend to prove and establish a defendant's guilt. ' " *Id.* (quoting *People v. Foster*, 198 Ill.App.3d 986, 993 (1990)).

¶ 38 Second, there is absolutely no evidence that Mr. Aarons' statement was made pursuant to any promises of leniency or other inducements. While petitioner speculates that "it would be expected that, since [Mr. Aaron] was under arrest when he gave the statement, he had a motive to do all he could to extricate himself from the custodial situation[,]" we note again that "mere speculation" may not be relied upon to support petitioner's claims of ineffective assistance of counsel. *Bew*, 228 Ill. 2d at 135.

¶ 39 Third, there was independent verification of substantial parts of Mr. Aaron's statement by other facts learned through police investigation. The statements provided by Mr. Aaron and Mr.

Solomon were consistent, and Mr. Aaron's statement was corroborated by the evidence discovered at the scene of the shooting. While petitioner contends that Mr. Aaron's statement merely contained "generic information that he easily could have heard around the neighborhood[,]" this argument again relies upon improper and unfounded speculation.

¶ 40 In sum, we conclude that petitioner's motion to quash was correctly denied, challenging that denial on appeal would have been meritless, and petitioner's assertions of ineffective assistance of counsel for failing to raise this issue on appeal were, therefore, properly dismissed at the second stage of these proceedings.

¶ 41 2. Motion *In Limine*

¶ 42 We next consider petitioner's contention that his appellate counsel improperly failed to challenge the denial of his motion *in limine* on appeal. Again, our resolution of this issue requires a consideration of the underlying merits of that motion to determine if petitioner was prejudiced by the failure to raise that issue in his direct appeal.

¶ 43 A circuit court's ruling on a motion *in limine* regarding the introduction or exclusion of evidence is reviewed under an abuse of discretion standard. *People v. Starks*, 2012 IL App (2d) 110273, ¶ 19. Absent an abuse of discretion, we will not disturb a circuit court's decision to grant or deny a defendant's motion *in limine*, and a circuit court abuses its discretion only when its decision is arbitrary, fanciful, or unreasonable or when no reasonable person would take the court's view. *Id.*

¶ 44 The record in this matter reveals that, after he was provided with his *Miranda* rights, petitioner made an oral statement implicating himself in the murder of Mr. Ewing. Petitioner subsequently declined to memorialize that statement on videotape. Prior to trial, petitioner moved to preclude the State from introducing any evidence regarding his refusal to provide a

videotaped statement. Petitioner contended that any reference to his refusal would violate his fifth amendment right to remain silent, and would be inconsistent with *Doyle v. Ohio*, 426 U.S. 610 (1976), in which the United States Supreme Court "found a due process violation in 'the use for impeachment purposes of petitioners' silence, at the time of arrest and after receiving *Miranda* warnings.' " *People v. Ruiz*, 132 Ill. 2d 1, 12 (1989) (quoting *Doyle*, 426 U.S. at 619). The circuit court rejected this argument, and we conclude that the circuit court did not abuse its discretion in doing so.

¶ 45 There are numerous Illinois decisions standing for the proposition that, once a defendant makes a post-*Miranda* oral statement, the introduction of evidence—that the defendant subsequently refused to memorialize that statement—does not necessarily violate either the fifth amendment, or the decision in *Doyle*. See *People v. Christiansen*, 116 Ill. 2d 96, 120 (1987) (recognizing that where a defendant does not remain silent after being apprised of his right to do so and makes oral statements, he has relinquished his rights under the fifth amendment and cannot claim that testimony indicating that he was unwilling to subsequently memorialize his oral statements violated his right to remain silent); *People v. Ruiz*, 132 Ill. 2d 1, 16 (1989) (recognizing that the *Christianson* decision stands for the proposition that that State is allowed "to introduce, in its case in chief, evidence that a defendant made an oral statement but refused to provide a written statement, on the theory that the defendant did not exercise his right to silence"); *People v. Lindgren*, 111 Ill.App.3d 112, 117 (1982) (rejecting similar argument under similar circumstances, and holding that "[i]t is not error to elicit a complete recitation of police procedure, even if the recitation includes reference to a defendant's exercise of his constitutional rights, so long as the recitation is not argued to be indicative of guilt.").

¶ 46 Here, the evidence that petitioner complains of was not entered into evidence to establish his guilt, but to explain why petitioner's statement was not memorialized. As the State notes on appeal, this was an important issue to address in light of the fact that the statements of Mr. Aaron and Mr. Coleman *were memorialized* and were also introduced at trial. In light of the above referenced authority and the facts of this matter, we do not find that the circuit court abused its discretion in finding that the evidence regarding petitioner's ultimate refusal to provide a videotaped statement "goes to the circumstances surrounding the making of the statement, and it's admissible." We certainly cannot say that this decision was arbitrary, fanciful, unreasonable, or that no reasonable person would take the court's view. *Starks*, 2012 IL App (2d) 110273, ¶ 19. As such, we find that the assertion of ineffective assistance of appellate counsel for failing to raise this issue on appeal was properly dismissed.

¶ 47 III. CONCLUSION

¶ 48 For the foregoing reasons, we conclude that both of petitioner's assertions of ineffective assistance of appellate counsel were properly rejected because petitioner failed to make a substantial showing that a reasonable probability exists that the outcome of his direct appeal would have been different but for his appellate counsel's purported errors. We, therefore, affirm the judgment of the circuit court which dismissed those assertions at the second stage of these postconviction proceedings.

¶ 49 Affirmed.