

FIFTH DIVISION  
September 30, 2013

No. 1-11-3262

**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  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County
Plaintiff-Appellee,	)	
	)	
v.	)	97 CR 18943
	)	
WILLIAM RILEY,	)	
	)	Honorable
Defendant-Appellant.	)	Dennis J. Porter,
	)	Judge Presiding.

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JUSTICE McBRIDE delivered the judgment of the court.  
Justices Palmer and Taylor concurred in the judgment.

ORDER

¶ 1 HELD: The trial court did not err in the second-stage dismissal of defendant's postconviction petition.

¶ 2 Defendant William Riley appeals from the trial court's dismissal of his postconviction petition at the second stage of postconviction proceedings. On appeal, defendant argues that he made a substantial showing of ineffective assistance of trial counsel for failing to file a motion to suppress his involuntary confession. Defendant asserts that his confession was the result of physical and emotional abuse by Chicago police detectives.

¶ 3 Following a bench trial, defendant was found guilty of first degree murder, home invasion, armed robbery, and aggravated unlawful restraint in the June 1997 homicide of Deborah Happ in the apartment belonging to her boyfriend Joseph Steinert. Defendant's girlfriend Sirena Smith was also charged in connection with this crime and pled guilty to one count of felony murder in exchange for a sentence of 48 years. See *People v. Smith*, 383 Ill. App. 3d 1078 (2008). As this is defendant's second appeal, we will discuss only those facts relevant to defendant's postconviction petition. A more detailed discussion of the evidence presented at defendant's trial can be found in his direct appeal. *People v. Riley*, No. 1-03-1141 (August 30, 2004) (unpublished order pursuant to Supreme Court Rule 23).

¶ 4 Prior to trial, defendant filed a motion to quash arrest and suppress evidence, arguing that the police lacked probable cause and to suppress the fruit from that illegal arrest, namely defendant's confession. The trial court conducted a hearing on the motion. Defendant testified that at about 9:30 p.m. on June 12, 1997, detectives entered his apartment, placed him in handcuffs and took him to the police station. At the police station, he stated that he was placed in a cell and did not recall being placed in an interview room. He said he did not leave the cell for three days until he was taken to the Cook County jail and denied going to the police station at 11th and State.

¶ 5 Detectives Nick Rossi and Lawrence Thezan testified at the hearing as well. Detective Rossi went to defendant's apartment on June 12, 1997, with his partner, Detective Edward Louis. They knocked on defendant's apartment door, defendant answered the door, and they asked if defendant would come to the police station for questioning, defendant agreed. Defendant was

not handcuffed while driven to the police station.

¶ 6 Defendant was placed in an interview room and was not handcuffed. Defendant admitted to Detective Rossi that he knew Steinert and had worked for him. Defendant agreed to go to the police station at 11th and State for further questioning, including a polygraph test. Defendant agreed, but the test could not be done until the next day. Defendant agreed to stay until the next day.

¶ 7 Detective Thezan worked in conjunction with Detectives Rossi and Louis. Detective Thezan spoke with Steinert after Happ's murder and Steinert gave defendant's name as a possible suspect. Detective Thezan arrived for work at 4 p.m. on June 13 and was briefed by Detectives Akin and Gorski, who had continued the investigation during the day. They told Detective Thezan that defendant told them he had been with "Money" and "Moose" on June 11, 1997. Defendant also told them that Moose was looking for a computer and defendant implied that he could break into Steinert's residence. Detective Thezan also learned that fingerprints from Steinert's back door matched defendant's fingerprints. Detective Thezan confronted defendant with the information from the investigation around 6:30 p.m. on June 13 and at that time defendant admitted to the burglary of Steinert's apartment. Defendant was arrested at that point.

¶ 8 Following the conclusion of the hearing, the trial court denied the motion. The court noted that it did not find defendant to be credible, but found the detectives' testimony to be credible. The court found that while defendant voluntarily went to the police station, an arrest occurred sometime between when defendant was taken and when he went to the polygraph test, but probable cause did not exist until after the polygraph test. However, the court found that any

statement defendant made was attenuated from the arrest.

¶ 9 The following evidence was admitted at defendant's bench trial. Detective Thezan testified that defendant confessed to his involvement in Happ's murder around 3 a.m. on June 14, 1997. Defendant gave a court reported statement around 2 p.m. in the presence of Detective Thezan and an assistant state's attorney. Defendant's statement provided as follows.

¶ 10 On June 11, 1997, shortly after 8 a.m., defendant and Smith went to Steinert's apartment, located at 1454 West Fargo in Chicago. Defendant had previously worked for Steinert during Steinert's renovation of the building and knew what time Steinert left for work. Defendant planned to steal Steinert's computer to satisfy a debt. Defendant broke into Steinert's apartment using a crowbar. While he was unhooking the computer tower, Happ came up and said hello. Happ asked defendant why he was there and defendant told her that he was taking the computer to get money Steinert owed defendant. Happ told defendant to leave or she would call the police.

¶ 11 Defendant grabbed Happ and walked her to the bedroom. Happ started to scream so defendant put some underwear in her mouth and tied a belt around her head to keep the gag in place. He tied Happ up with another belt and a telephone cord. He asked Happ where some money was located and she nodded toward a pair of pants on the door. Defendant took some change and CTA tokens as well as Happ's purse. Defendant initially got a knife, but decided not to stab Happ. Instead, he got his crowbar and struck her in the head. He left with Smith and took the computer, Happ's purse, and part of Steinert's telephone because Smith had touched it.

¶ 12 They went to the apartment of Robert Miller, known as Moose, to see if the computer was worth any money, but Miller told defendant it was worthless. Defendant kept a tape recorder

from Happ's purse and threw the rest away. Miller's girlfriend threw the computer away.

Defendant left his duffel bag, containing the crowbar, at Miller's apartment, which was later recovered by the police. The State also presented the testimony of Miller, Carlotta Pidwinski (Miller's girlfriend), Rodney Smith and Quentin Pruett, which corroborated the events at Miller's apartment.

¶ 13 The State also presented significant physical evidence. Multiple experts testified about the physical evidence in this case; specifically, glass and paint chips matching Steinert's back door were found inside defendant's duffel bag, a hair consistent with Happ which was also found inside the duffel bag, and the marks and damage to Steinert's back door which were consistent with the crowbar. The parties stipulated that blood on the crowbar could have originated from Happ and could not have originated from either defendant or Smith and that DNA found on the crowbar matched Happ and did not match defendant or Smith. The parties also stipulated that seven fingerprints were found on the door to Steinert's apartment and six of the fingerprints matched defendant's fingerprints and the seventh fingerprint matched Steinert.

¶ 14 The defense rested without presenting any additional evidence. Following closing arguments, the trial court found defendant guilty of first degree murder, home invasion, armed robbery, and aggravated unlawful restraint. The trial court sentenced defendant to the death penalty for the first degree murder, 30 years for home invasion, a consecutive term of 30 years for armed robbery, and a concurrent term of 3 years for aggravated unlawful restraint. Subsequently, defendant's death sentence was commuted to natural life imprisonment by then Governor George Ryan.

¶ 15 On direct appeal, defendant argued that (1) the connection between defendant's illegal arrest and confession was not attenuated by evidence tainted by the illegal arrest; (2) the disciplinary suspension of one of defendant's attorneys between defendant's trial and capital sentencing hearing deprived him of effective assistance of counsel; and (3) the death penalty was excessive punishment in light of the circumstances of the crime and defendant's background<sup>1</sup>. This court affirmed defendant's conviction and natural life sentence. See *Riley*, No. 1-03-1141.

¶ 16 In February 2003, prior to the issuance of this court's decision in his direct appeal, defendant filed a *pro se* postconviction petition. The office of the State Appellate Defender was appointed to represent defendant. An amended postconviction petition was filed in July 2008. The amended petition alleged that his trial counsel was ineffective for failing to file a motion to suppress his involuntary confession which was the result of police abuse, and that appellate counsel was ineffective for failing to raise the denial of a mistrial or sanctions after the police mistakenly destroyed the crowbar allegedly used in the case prior to trial. The State filed a motion to dismiss defendant's petition, which the trial court granted in October 2011.

¶ 17 This appeal followed.

¶ 18 On appeal, defendant argues that he set forth a substantial showing that his trial counsel was ineffective for failing to file a motion to suppress his confession. He asserts that his confession was involuntary and the product of physical and emotional abuse by police detectives.

¶ 19 The Illinois Post-Conviction Hearing Act (Post-Conviction Act) (725 ILCS 5/122-1

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<sup>1</sup> We found defendant's death penalty challenge to be moot since his sentence had already been commuted to natural life. *Riley*, No. 1-03-1141, slip op. at 38-9.

through 122-8 (West 2004)) provides a tool by which those 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. 725 ILCS 5/122-1(a) (West 2004); *People v. Coleman*, 183 Ill. 2d 366, 378-79 (1998). Postconviction relief is limited to constitutional deprivations that occurred at the original trial. *Coleman*, 183 Ill. 2d at 380. “A proceeding brought under the [Post-Conviction Act] is not an appeal of a defendant's underlying judgment. Rather, it is a collateral attack on the judgment.” *People v. Evans*, 186 Ill. 2d 83, 89 (1999). “The purpose of [a postconviction] proceeding is to allow inquiry into constitutional issues relating to the conviction or sentence that were not, and could not have been, determined on direct appeal.” *People v. Barrow*, 195 Ill. 2d 506, 519 (2001). Thus, *res judicata* bars consideration of issues that were raised and decided on direct appeal, and issues that could have been presented on direct appeal, but were not, are considered forfeited. *People v. Blair*, 215 Ill. 2d 427, 443-47 (2005).

¶ 20 At the first stage, the circuit court must independently review the postconviction petition within 90 days of its filing and determine whether “the petition is frivolous or is patently without merit.” 725 ILCS 5/122-2.1(a)(2) (West 2002). If the circuit court does not dismiss the postconviction petition as frivolous or patently without merit, then the petition advances to the second stage. Counsel is appointed to represent the defendant, if necessary (725 ILCS 5/122-4 (West 2002)), and the State is allowed to file responsive pleadings (725 ILCS 5/122-5 (West 2002)).

¶ 21 At this stage, the circuit court must determine whether the petition and any accompanying

documentation make a substantial showing of a constitutional violation. See *Coleman*, 183 Ill. 2d at 381. "To accomplish this, the allegations in the petition must be supported by the record in the case or by its accompanying affidavits." *Coleman*, 183 Ill. 2d at 381. If no such showing is made, the petition is dismissed. "At the second stage of proceedings, all well-pleaded facts that are not positively rebutted by the trial record are to be taken as true, and, in the event the circuit court dismisses the petition at that stage, we generally review the circuit court's decision using a *de novo* standard." *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). If, however, a substantial showing of a constitutional violation is set forth, then the petition is advanced to the third stage, where the circuit court conducts an evidentiary hearing. 725 ILCS 5/122-6 (West 2002).

¶ 22 Claims of ineffective assistance of counsel are resolved under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). In *Strickland*, the Supreme Court delineated a two-part test to use when evaluating whether a defendant was denied the effective assistance of counsel in violation of the sixth amendment. Under *Strickland*, a defendant must demonstrate that counsel's performance was deficient and that such deficient performance substantially prejudiced defendant. *Strickland*, 466 U.S. at 687. To demonstrate performance deficiency, a defendant must establish that counsel's performance fell below an objective standard of reasonableness. *People v. Edwards*, 195 Ill. 2d 142, 163 (2001). In evaluating sufficient prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. If a case may be disposed of on the ground of lack of sufficient prejudice, that



course should be taken, and the court need not ever consider the quality of the attorney's performance. *Strickland*, 466 U.S. at 697.

¶ 23 Defendant asserts in his affidavit that prior to trial, he told his trial attorney that he had been physically and emotionally abused by the detectives involved in this case. Defendant details the following allegations of abuse were communicated to his trial counsel.

¶ 24 On June 12, 1997, the officers hit and punched defendant several times before removing him from the apartment. As he was being transported from his apartment to the police station, Detective Rossi put a gun to his head and said, "I should kill your n\*\*\* ass," and slapped defendant with his free hand. After defendant was placed in an interview room at the police station, Detective Rossi and his partner "smacked" him. Detective Rossi then placed a telephone book against defendant's midsection and struck it repeatedly with a nightstick while the other detective held defendant by the neck to prevent him from avoiding the blows. When defendant denied his involvement in Happ's murder, Detective Rossi placed the telephone book against his head. Defendant has no recollection of what happened after that incident.

¶ 25 In his affidavit, defendant only identified Detective Rossi by name, but in his amended petition and brief on appeal, defendant asserts that Detectives Louis and Thezan participated in the alleged physical abuse. Defendant offered no description or other identifying information about the unnamed partner that participated in the alleged abuse. The record shows that multiple detectives investigated Happ's murder over multiple days that defendant was at Area 3. Since Detective Rossi was the only detective directly named by defendant, we will not assume any allegations against unnamed police detectives and limit our review of defendant's allegations only

to Detective Rossi.

¶ 26 Defendant stated that he told his attorney that he did not confess to Happ's murder and the statement the State intended to introduce was not made by him. Defendant said that he repeated these allegations of police brutality to the supervising attorney at the public defender's office. Defendant contends that he asked his attorney to file a motion to suppress his statement because he had been beaten by the police, but his attorney did not file that motion.

¶ 27 Defendant also attached an affidavit from one of his postconviction attorneys. In this affidavit, the postconviction attorney stated that he was present during a June 2007 telephone conversation with the lead postconviction attorney and defendant's trial attorney. During that call, trial counsel told them that defendant "persistently denied having made the court-reported statement that was introduced against him at trial." Defendant repeated this denial to trial counsel's supervisor. Trial counsel pursued a motion to quash defendant's arrest and did not file a motion to suppress the confession as involuntary. In a second telephone call with the same three individuals, trial counsel again stated that defendant denied making the statement attributed to him and trial counsel "could not remember whether or not Riley told him that the police had beaten him."

¶ 28 Additionally, defendant attached numerous exhibits in which other individuals alleged physical abuse by the detectives involved in defendant's case. The exhibits included affidavits from individuals detailing abuse by detectives, published appellate court opinions, portions of the docket on cases, copies of complaints, and portions of testimony.

¶ 29 Based on this documentation, defendant argues that his trial counsel's failure to file a

motion to suppress constituted deficient performance and this failure resulted in prejudice.

Defendant asserts that his trial attorney did not file the motion because he was under the mistaken belief that a motion to suppress was not viable for an involuntary confession defendant denied having made. Defendant contends that there is a reasonable probability that the result of the proceeding would have been different because the testimony of Miller and the other witnesses present at his apartment as well as the physical evidence from the duffel bag would not have been admissible since this evidence was the result of the coerced confession.

¶ 30 The State maintains that the trial court properly dismissed defendant's petition. The State points out that defendant's arguments "hinge entirely on his assertion that he told his trial attorney that he had been physically abused by the detectives at Area 3." The State contends that nothing in the record on appeal supports defendant's claim that he informed his trial counsel about the alleged physical abuse other than defendant's own affidavit.

¶ 31 In order to prove ineffective assistance of counsel, defendant must overcome the presumption that the challenged conduct might be considered sound trial strategy under the circumstances. *People v. Giles*, 209 Ill. App. 3d 265, 269 (1991). A decision that involves a matter of trial strategy will typically not support a claim of ineffective representation. *People v. Simmons*, 342 Ill. App. 3d 185, 191 (2003). The question of whether to file a motion to suppress evidence is traditionally considered a matter of trial strategy. *People v. Rodriguez*, 312 Ill. App. 3d 920, 925 (2000). In order to establish prejudice resulting from the failure to file a motion to suppress, a defendant must show that the motion would have been granted and that the trial outcome would have been different if the evidence had been suppressed. *People v. Patterson*,

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217 Ill. 2d 407, 438 (2005). The failure to file a motion to suppress does not establish incompetent representation when the motion would have been futile. *Patterson*, 217 Ill. 2d at 438.

¶ 32 Defendant argues that his trial attorney was ineffective for failing to file a motion to suppress his confession as involuntary due to police coercion and abuse. He further asserts that his attorney misapprehended the law because trial counsel erroneously believed that he could not challenge defendant's confession as involuntary as well as that defendant denied making the statement.

¶ 33 Defendant relies on exhibits attached to his petition to support his claim that his trial attorney misapprehended the law. We note that no affidavit from defendant's trial counsel was attached to the postconviction petition, but we also acknowledge that case law does not require evidence where " ' the only affidavit that defendant could possibly have furnished, other than his own sworn statement, would have been that of his attorney.' " *People v. Hernandez*, 351 Ill. App. 3d 28, 35 (2004) (quoting *People v. Collins*, 202 Ill. 2d 59, 68 (2002), quoting *People v. Williams*, 47 Ill. 2d 1,4 (1970)). However, defendant could have included an affidavit from the supervising attorney whom he stated in his affidavit was also told about the abuse by the detectives. No allegation of ineffective assistance was raised against the supervising attorney and there was no explanation why this supporting affidavit was not included. See 725 ILCS 5/122-2 (West 2008).

¶ 34 Instead, defendant relies on an affidavit from one of his postconviction attorneys which summarized trial counsel's statements during a telephone call. We first observe that this affidavit

contains hearsay about what trial counsel told postconviction counsel. Generally, hearsay affidavits are insufficient to support a postconviction claim. *People v. Gray*, 2011 IL App. (1st) 091689, ¶ 16; *People v. Morales*, 339 Ill. App. 3d 554, 565 (2003). Even if we considered this hearsay affidavit, trial counsel never admitted that defendant told him about the alleged abuse. According to the affidavit, trial counsel told postconviction counsel that he could not recall whether defendant told him about the alleged abuse, but trial counsel did recall that defendant persistently denied that he confessed. Nothing in the affidavit suggests that trial counsel failed to file a motion to suppress based on a misapprehension of the law that he could not file a motion to quash arrest as well as a motion to suppress. Rather, the affidavit indicated that trial counsel filed the motion to quash arrest based on defendant's denial of making the statement. The postconviction attorney never stated that trial counsel's trial tactics were based on the belief that he could not file a motion to suppress.

¶ 35 Further, the record supports the trial strategy not to pursue a motion to suppress because defendant's affidavit contradicts his prior testimony at the hearing on his motion to quash arrest. At the hearing, defendant stated that the police officers "handcuffed [him] and took [him] out of [his] apartment and put [him] in the back seat of their car and took [him] to the police station." Defendant also testified on cross-examination that when he arrived at the police station, the police "put [him] in a cell and locked [him] up" and stayed there for three days until he was taken by bus to the Cook County Jail. Defendant stated that he did not "recall" being in an interview room at the police station. When asked if it was his testimony that he never left the cell from the time they put him there until he got on the bus, defendant responded "as far as I can recall, yes."

He also could not describe the detectives other than white males and testified that they never told him who they were, but he said he knew they were detectives because they had on suits and there guns were drawn.

¶ 36 In contrast, defendant made no reference to having asserted his fifth amendment rights or that Detective Rossi put a gun to his head and slapped him while en route to the police station. Defendant stated in his affidavit that Detective Rossi and his partner placed him in an interview room and alleged that the abuse occurred while he was in the interview room. Defendant's testimony at the motion to quash hearing contradicts defendant's affidavit in support of his allegations. He initially denied being in the interview room, but now asserts that he was in the interview and subjected to physical abuse.

¶ 37 Given defendant's prior testimony, trial counsel could have made decision that a motion to suppress would not have been successful. Defendant's affidavit is in direct contradiction to his testimony at the hearing on the motion to quash arrest. If defendant would have testified at a hearing on a motion to suppress in accordance with his allegations, then defendant's credibility would be questioned and his testimony would have been subject to impeachment. Defendant asserts that trial counsel could have litigated a motion to suppress a confession as involuntary without calling defendant to testify because the burden of proving voluntariness rests with the State. While this is a true statement of law, "[w]here the State makes *prima facie* showing that a confession was voluntary, the burden of producing evidence to show that confession was involuntary shifts to the defense, and shifts back to the State only when defendant has produced such evidence." *People v. Cozzi*, 93 Ill. App. 3d 94, 98 (1981). Here, the State had defendant's

signed, court-reported confession as *prima facie* evidence of a voluntary confession. Defendant contends that trial counsel could have presented evidence of other abuse allegations involving the same detectives, but absent defendant's testimony, no allegations of abuse would have been presented regarding the voluntariness of his confession. The conflict with defendant's prior testimony supports a strategic decision not to pursue a motion to suppress.

¶ 38 Nevertheless, defendant has not shown a likelihood that the motion to suppress would have been granted. In addition to the conflicts stated above, most of the supplemental exhibits from other criminal cases do not contain any allegations of abuse by Detective Rossi and do not support defendant's claim. Neither of the cited appellate decisions involved allegations of abuse against Detective Rossi. See *People v. Hunley*, 189 Ill. App. 3d 24 (1989) (Detective Louis was mentioned in the decision, though no allegations of abuse were made against him); *People v. Mackey*, 207 Ill. App. 3d 839 (1990) (allegations of abuse made against Detective Thezan by the defendant, but conviction was affirmed on appeal). In *Smith v. Gildea*, 1998 WL 703677 (N.D. Ill.), defendant filed a federal action against several police officers based on a violation of his civil rights for a wrongful arrest. Detective Rossi was named in the complaint, but he was not mentioned in the facts of the case. Additionally, no allegations of police brutality were made in the case and the district court granted summary judgment in favor of the defendants. Another federal case, *Jackson v. Sheahan, et al.*, No. 02 C 3241, attached to the petition was filed after defendant's trial and is not relevant in this case. Nevertheless, we note that the case was dismissed after a settlement in which the defendants denied any wrongdoing and liability.

¶ 39 Several of the affidavits from individuals that alleged abuse against Detective Rossi,

among other detectives, related to criminal cases that were ongoing at the same time as defendant's case. Defendant contends that these cases were discoverable by trial counsel if he had inquired within the public defender's office about pending claims of police abuse. Defendant fails to cite any authority that such investigation is reasonable in the course of representation.

"Counsel has only a duty to make reasonable investigations or to make a reasonable decision which makes particular investigations unnecessary, and the reasonableness of a decision to investigate is assessed applying a heavy measure of deference to counsel's judgment." *People v. Pecoraro*, 175 Ill. 2d 294, 324 (1997). Further, there is nothing in the affidavits to imply that the allegations of abuse had been raised and were discoverable prior to defendant's trial. For example, the attached exhibit of a motion to suppress in Ronald Hinton's case was filed after defendant's trial. "Where circumstances known to counsel at the time of his investigation do not reveal a sound basis for further inquiry in a particular area, it is not ineffective for the attorney to forgo additional investigation." *Pecoraro*, 175 Ill. 2d at 324. It would be unduly burdensome to require his trial counsel to investigate in this manner.

¶ 40 Even if we considered those affidavits, none of the affiants described abuse similar in character to defendant's allegations. "Prior allegations of brutality have been found admissible where they involved the same officer or officers as in the defendant's case, where they involved similar methods of abuse, and where they occurred at or near the time of the defendant's allegations." *People v. Reyes*, 369 Ill. App. 3d 1, 19 (2006) (citing *People v. Patterson*, 192 Ill. 2d 93, 115 (2000)). Specifically, defendant alleged that Detective Rossi "smacked" him and held a telephone book to his midsection and his head and then struck him with a nightstick. None of



the affidavits alleged any abuse in which Detective Rossi struck them with a nightstick through a telephone book. The affidavit from Ronald Hinton included a general statement that he was "beaten with a baton," though in an additional exhibit, Hinton alleged in a motion that he was hit by "a billy club by an unknown white officer." Hinton had previously made specific allegations against Detective Rossi, indicating that this allegation of abuse was against another officer. The remaining supporting exhibits do not show similar methods of abuse by Detective Rossi to the abuse alleged by defendant. "Generalized claims of misconduct, without any link to defendant's case, *i.e.*, some evidence corroborating defendant's allegations, or some similarity between the type of misconduct alleged by defendant and that presented by the evidence of other cases of abuse, are insufficient to support a claim of coercion." *People v. Anderson*, 375 Ill. App. 3d 121, 137-38 (2007).

¶ 41 Based on the record, defendant's exhibits, the conflicts between defendant's prior testimony, and the limited connection between this case and prior allegations of abuse against Detective Rossi, we conclude that defendant has not shown a likelihood that the motion to suppress would have been granted.

¶ 42 However, even if the motion to suppress his confession was granted, defendant cannot show how the result of the trial proceeding would have been different. The State asserts that defendant has been collaterally estopped from challenging prejudice because it was previously considered on direct appeal. "The collateral estoppel doctrine bars relitigation of an issue already decided in a prior case." *People v. Tenner*, 206 Ill. 2d 381, 396 (2002). "The collateral estoppel doctrine has three requirements: (1) the court rendered a final judgment in the prior case; (2) the

party against whom estoppel is asserted was a party or in privity with a party in the prior case; and (3) the issue decided in the prior case is identical with the one presented in the instant case."

*Tenner*, 206 Ill. 2d at 396. Here, it is clear the first two requirements are met, we must determine if the issue raised by defendant in this case is identical to one presented in his direct appeal.

¶ 43 According to the State, the question of whether the suppression of defendant's confession would have affected the outcome of the trial was determined on direct appeal. On direct appeal, defendant argued that if his confession had been suppressed, then nearly all of the State's evidence would have been suppressed as well because it was tainted by the illegal arrest. We reviewed defendant's argument as follows.

"Defendant further argues that all the evidence obtained by the police was a direct result of his illegal arrest, and is, therefore, tainted. We disagree. Under a poisonous tree analysis, the defendant bears the initial burden of showing a connection between the primary illegality and the discovery of allegedly tainted evidence. *People v. Mitchell*, 152 Ill. 2d 274, 326 (1992). First, defendant's fingerprints would have inevitably been discovered because of defendant's previous criminal history. 'If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means \*\*\* then the deterrence rationale has so little basis that the evidence should be received. Anything less

would reject logic, experience, and common sense.' *Nix v. Williams*, 467 U.S. 431, 444, 81 L. Ed. 2d. 377, 387-88, 104 S. Ct. 2501, 2509 (1984). Additionally, defendant gave the police the name 'Moose' as someone he had been with on June 11, 1997, presumably as his alibi. The police obtained Moose's real name, Robert Miller, and his residence. Once the police went to Miller's residence the duffel bag containing the crowbar was retrieved, and from the bag and the crowbar substantial evidence as to defendant's guilt was discovered. The four witnesses to defendant's possession of the bag and a computer presented strong testimony and their credibility was not placed in doubt at trial. Even if defendant's statement was improperly admitted, we find such error to be harmless because such overwhelming circumstantial evidence existed that no reasonable doubt was present as to defendant's guilt." *Riley*, No. 1-03-1141, slip op. at 34-6.

¶ 44 In the instant case, defendant argues that if his confession had been suppressed, the evidence that he possesses a crow bar with Happ's DNA and the testimony of the witnesses from Miller's apartment would have been suppressed because the police obtained Miller's name as a result of the coerced confession. While the same legal claim was not raised in both cases, the same issue, whether the evidence against defendant would have been suppressed along with his confession, has been asserted in both cases. Since we have already concluded that the

suppression of the confession would not eliminate the evidence against defendant, defendant is collaterally estopped from considering this issue a second time.

¶ 45 Further, defendant's reliance on *People v. Wrice*, 2012 IL 111860, is misplaced. In *Wrice*, the supreme court held that "use of a defendant's physically coerced confession as substantive evidence of his guilt is never harmless error." *Wrice*, 2012 IL 111860, at ¶ 71. However, we are not considering whether the admission was harmless error nor does the conclusion in the direct appeal conflict with *Wrice*. The doctrine of collateral estoppel applies to the issue of whether the remaining evidence presented by the State would have been suppressed with the confession as fruit of the poisonous tree. We concluded in the direct appeal that it would not and collateral estoppel bars our reconsideration of this same issue.

¶ 46 However, even if collateral estoppel did not apply, the suppression of defendant's confession would not prevent other evidence from being admitted. As we previously observed in defendant's direct appeal, the State presented "overwhelming physical evidence" as well as several witnesses that identified the duffel bag containing the crowbar as belonging to defendant. *Riley*, No. 1-03-1141, slip op. at 19. The presence of defendant's fingerprints on the door to Steinert's apartment would have been discovered by the police. We also point out that prior to confessing, defendant spoke to Detectives Akin and Gorski, and no allegations of abuse have been suggested against either of these detectives. During that conversation, defendant told them he had been with "Moose" on the day of the homicide and that Moose was looking for a computer, which defendant knew Steinert possessed. Moose was the nickname for Robert Miller. Once the police learned Miller's name, they discovered the duffel bag containing

significant physical evidence, as we have previously detailed.

¶ 47 We reach the same conclusion in this case. As outlined in the direct appeal, the physical evidence and witness testimony presented at trial established overwhelming evidence of defendant's guilt and this evidence was not tainted by an allegedly involuntary confession.

¶ 48 Accordingly, the suppression of his confession would not have changed the outcome of the trial. Since defendant cannot demonstrate the requisite prejudice, he has failed to make a substantial showing of the constitutional claim of ineffective assistance of trial counsel. The trial court properly dismissed his postconviction petition at the second stage.

¶ 49 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 50 Affirmed.