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2016 IL App (5th) 130501-U

NO. 5-13-0501

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

**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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 07-CF-41
	)	
JARVIS L. BOOSE,	)	Honorable
	)	John Baricevic,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.  
Presiding Justice Schwarm and Justice Goldenhersh concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court's dismissal of the defendant's postconviction petition at the first stage of the postconviction proceedings is reversed where the defendant has alleged the gist of a constitutional claim that the investigating officer did not scrupulously honor his invocation of his right to silence. The cause is remanded for second-stage proceedings under the Post-Conviction Hearing Act.

¶ 2 The defendant, Jarvis Boose, appeals the first-stage dismissal of his petition for postconviction relief filed pursuant to section 122-1 of the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 (West 2012)). For the following reasons, we reverse and remand for second-stage postconviction proceedings.

¶ 3 The defendant was indicted for one count of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2006)) and one count of attempted armed robbery (720 ILCS 5/8-4(a) (West 2006)) after Darrell Britton died of injuries he received in an incident that occurred on December 22, 2006.

¶ 4 On March 5, 2008, the defendant filed a motion to suppress statements made to the East St. Louis police on January 9, 2007. The defendant asserted that he had given two video-recorded interviews with police. The first interview was terminated when he invoked his right to silence. According to East St. Louis Detective Rick Perry, the defendant then made an off-camera admission to involvement in the incident. The second interview then took place. The motion sought suppression of the second interview because the defendant claimed that it had violated section 103-2.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-2.1 (West 2006)), which requires the electronic recording of custodial interrogations of murder suspects. The motion also sought the suppression of incriminating statements made after the defendant's termination of the first interview.

¶ 5 A hearing on the motion was held on March 6, 2008. During the hearing, defense counsel argued that anything that the defendant said off camera was inadmissible as it was the result of continued questioning by the police. Thus, the defendant argued that any statement after the first interview should be suppressed. In response, the State asserted that the off-camera statement was admissible because it had been a spontaneous declaration.

¶ 6 Detective Rick Perry testified that the first interview with the defendant began at 12:26 p.m. on January 9, 2007. Detective Michael Floore had also been present. The defendant was advised of his *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)), and he initialed and signed the advisement form. During the interview, the defendant invoked his right to remain silent. The interview was terminated. According to Detective Perry, as he was escorting the defendant back to the jail area, the defendant spontaneously admitted to him that he had shot Britton and agreed to talk further with him. Perry took the defendant back to the interview room, where the defendant was again advised of his *Miranda* rights, and the defendant acknowledged that he had not been coerced into giving a second interview. Perry testified that in the 30 to 60 seconds that it took him to walk the defendant to the jail, he said nothing to the defendant. During the second interview, the defendant invoked his right to counsel and the interview was terminated.

¶ 7 The defendant testified that after the first interview ended, the officers were angry with him and repeatedly told him that he needed to help himself. Detective Perry indicated to the defendant that the police could not do anything for him and that he had to help by telling them that he did it. The defendant told Perry that he would talk to him. The defendant denied making any admissions to Detective Perry. The defendant felt that the detectives were trying to coerce him. He explained that he agreed to the second interview because he wanted to tell the officers, on record, that he had not admitted anything.

¶ 8 The trial court entered an order denying the defendant's motion, finding, in pertinent parts, that the State's witness was believable and that the statement was admissible as a voluntary statement that was not given in response to questioning.

¶ 9 The following evidence was presented at the three-day jury trial. Sharlene Hamilton testified that she had been a shift manager at a McDonald's restaurant where Britton was also a shift manager. On the night of the shooting, she and Britton had gone out to a club together and she drove him to his residence near 26th Street and Louisiana Avenue around 3:45 a.m.

¶ 10 Johnnie Wright testified that on December 22, 2006, she had lived in an apartment next door to Britton. She admitted that she was a long-time crack cocaine user. She had likely used crack cocaine on the night of December 22, 2006, because she had been out on the street looking to get more crack. She knew the defendant and Britton. Britton and the defendant knew each other and were friends. Wright had been out looking for Britton because he owed her money. She was also trying to sell cleaning products to buy crack. While she was outside looking for Britton, she saw the defendant in an alley near the parking lot of a gas station close to her apartment building. She testified that she thought it was about three or four in the morning because the crack house had closed for the night.

¶ 11 According to Wright, the defendant had been talking to his brother, Carlos. It appeared they were arguing. She testified that she heard the defendant say, "I can shoot too." Wright was walking toward them when she saw Britton walking toward his apartment. She saw the defendant walk around the apartment building and Britton go in

the same direction. She then heard a gunshot from the direction of the front of the apartment building. She went to the front of the apartment building and found Britton on the ground, bleeding from the head and gasping. Wright testified that using crack had not clouded her judgment because she knew the defendant and identified him at the scene.

¶ 12 Deontae Rice testified that he was the defendant's cousin. Rice, Demarrio Williams, and Vincent Beamon had been together on the night of the incident because the defendant had taken a nine-millimeter gun that belonged to Beamon. Williams had tried to get the gun back from the defendant, but the defendant had refused, walked away, and shot the gun in the air. Later, the three men found the defendant's brother and had Carlos try to get the gun from the defendant. The defendant became angry when Carlos spoke to him. They had been in a car parked near the parking lot of a gas station at 26th Street and Louisiana. Rice could see the defendant walking away and Britton walking into the area. From the car, Rice saw the defendant approach Britton and tell Britton to "give up" what he had. Rice testified that he heard Britton say, "You're going to have to kill me." Rice testified that he witnessed the defendant raise the gun and shoot Britton. He admitted that he had smoked marijuana that night.

¶ 13 Rice testified that he did not immediately go to the police because he was afraid that he would be implicated. He left town for a couple days to avoid talking to the police. He wanted to make sure that he was not implicated in committing the crime.

¶ 14 Demarrio Williams testified that he had been in a car that was near the scene of the incident. He was in the car with Beamon, Rice, and Carlos. He admitted that he had been drinking and smoking marijuana that night. Williams also saw Rice try to get the

gun from the defendant and then trying to have Carlos "calm" the defendant down and get the gun. Williams also testified that he witnessed the defendant walk down 26th Street and confront Britton. He heard some talking and saw the gun go up and off, and he saw Britton fall. Carlos ran after the defendant while the others drove away in the car.

¶ 15 Williams did not speak with the police until early January. Williams testified that Detective Perry told him that the defendant said that Williams had shot Britton. Williams told Perry that he did not shoot Britton and that the defendant had committed the crime. Williams further testified that he did what he had to do to avoid being charged with the crime. Williams testified that he did not go to the police after the crime occurred because he did not want to be placed at the scene. He did not want to "get framed" by the East St. Louis police.

¶ 16 Forensic testimony established that Britton died from a gunshot wound to the head. The bullet fragments recovered from Britton's body were examined and found to be consistent with having come from a .38-caliber or 9-millimeter gun.

¶ 17 Detective Perry testified that he recalled questioning Williams, Rice, and Beamon on January 11, 2007. Perry denied that any of those men had been suspects. He denied that he told Williams that Williams was a suspect or that the defendant had accused Williams of committing the crime. According to Detective Perry, the defendant had always been the suspect.

¶ 18 Detective Perry also testified about the interviews with the defendant. He admitted to making a false statement to the defendant during the first interview that the police had video surveillance from the gas station, placing the defendant near the scene of

the crime. He testified that this was the only deceptive technique that he had used during the interview with the defendant. He also admitted that he might have cursed and yelled during the interview.

¶ 19 Redacted versions of the DVDs containing the videos of the police interviews were played for the jury. The redacted version of the first interview showed the defendant denying all knowledge of the shooting, denying that he knew the victim, and invoking his right to silence, which terminated the interview. A redacted video of the second interview showed the defendant admitting that he had "made a mistake" before invoking his right to counsel and terminating the interview.

¶ 20 During deliberations, the jury sent out a note stating that it was deadlocked. The trial court told the jury to continue with deliberations, and a verdict was reached approximately two hours later. The defendant was found guilty of first-degree murder and attempted armed robbery. Thereafter, the defendant filed a motion for new trial, which contained a handwritten affidavit from Beamon stating that he had not seen the defendant with a gun, had not seen the defendant shoot Britton, and had been coerced by Detective Perry into falsely stating that the defendant had taken his gun and that he had seen the defendant shoot Britton. During the sentencing hearing, the court denied the defendant's posttrial motion and sentenced the defendant to 33 years' imprisonment. The defendant appealed his conviction and this court affirmed. *People v. Boose*, No. 5-08-0283 (2010) (unpublished order under Supreme Court Rule 23).

¶ 21 On July 17, 2013, the defendant filed a petition for postconviction relief pursuant to the Act concerning allegations of misconduct on the part of Detective Perry. The

defendant asserted that he was entitled to postconviction relief because Perry committed perjury during the motion to suppress hearing and at the defendant's trial. The defendant also claimed that assistant State's Attorney Joe Christ, State's Attorney Robert Haida, and assistant State's Attorney Brendan Kelly suppressed evidence concerning Perry's misconduct and that trial counsel had failed to adequately investigate the allegations with regard to Perry.

¶ 22 The defendant noted that, while his case was on direct appeal, Detective Perry had falsely testified in a suppression hearing in an unrelated criminal case. In that case, the circuit court found Perry's testimony incredible, and, three days following the hearing, the St. Clair County State's Attorney dismissed all charges against that defendant because of the false testimony. Thus, the defendant in the present case argued that Perry had engaged in a pattern of misconduct, which included falsely testifying at suppression hearings, and that this supported the allegations of misconduct that the defendant had raised against Perry.

¶ 23 Attached to the defendant's postconviction petition were newspaper articles reporting on the unrelated criminal case. One article reported that the St. Clair County State's Attorney had indicated that he would not use Detective Perry as a key witness in any criminal case because of his credibility issues. Another article reported that the State's Attorney had indicated that it was difficult to proceed with Detective Perry as a witness in another trial and that he would not file new charges in any case in which Perry was the charging officer. The article reported that the State's Attorney had sent a letter to



East St. Louis city leaders, dated January 28, 2009, which indicated that the State's Attorney's office would review every pending case involving Detective Perry.

¶ 24 The defendant also asserted in his postconviction petition that his appellate counsel was ineffective for failing to supplement the record on appeal with these articles, which were published in January 2009. Attached to his petition was a letter from his appellate counsel where counsel stated that he could not directly address the information that had recently come out about Perry in the appellant brief because, on direct appeal, he could only "discuss things which happened before and during the trial." Moreover, the defendant noted that notwithstanding the revelations concerning Detective Perry, the State argued on direct appeal that Perry was a credible witness.

¶ 25 On July 18, 2013, the circuit court dismissed the defendant's postconviction petition on the basis that it was filed without support of affidavits and was a "conclusory pleading." The court therefore concluded that the postconviction petition was without merit as it alleged no gist of a constitutional violation. On August 15, 2013, the defendant mailed a motion for leave to file an amended postconviction petition as well as an amended postconviction petition to the St. Clair County clerk for filing. In this motion, the defendant explained that the only affidavits that he could have attached to his previous petition were from former St. Clair County State's Attorney Haida, former assistant State's Attorney Kelly, Detective Perry, his counsel at trial, or the trial judge. The defendant argued that because none were readily available or legally required to provide him with an affidavit, his failure to provide their affidavits to the court was not a valid ground for summary dismissal.

¶ 26 Furthermore, the defendant asserted that he had attached his own affidavit to his initial postconviction petition. However, he discovered, after the circuit court issued its order dismissing his petition, that the affidavit had been lost and omitted from his initial petition. The amended petition asserted the same claims that were raised in the initial petition. Attached to the motion was the defendant's notarized affidavit, which stated that he had requested that his counsel investigate allegations of misconduct regarding Detective Perry. However, counsel informed him that Detective Perry was "clean" and a "by the book cop." The defendant attached the transcript of the motion to suppress hearing to the amended petition. He also attached the newspaper articles reporting on Detective Perry's misconduct in the unrelated criminal case as well as the appellate briefs filed in his direct appeal.

¶ 27 On September 12, 2013, the circuit court issued an order finding that the defendant had not supported his motion with adequate reason for filing a request for a subsequent or amended postconviction petition. The court further found that in reviewing the substantive claims, the claims were generally of a conclusory nature and failed to show how an ineffective-assistance-of-counsel claim would have changed the outcome of the case. The court therefore found that the defendant failed to raise the gist of a constitutional claim and denied his petition. On September 25, 2013, the defendant filed a motion to reconsider, arguing that the court improperly entered a "partial summary dismissal" of the amended petition. He reiterated that he had raised three claims in his amended postconviction petition: (1) that Perry falsely testified at the suppression hearing and trial; (2) that Haida and Christ had suppressed material evidence concerning Perry;

and (3) that trial counsel had failed to adequately investigate Perry and that appellate counsel was ineffective for failing to supplement the briefs and record on appeal. The defendant asserted that the circuit court failed to address the first two claims and therefore improperly entered a partial summary dismissal.

¶ 28 On the same day, September 25, 2013, the circuit court denied the defendant's motion to reconsider. The court clarified that its September 12, 2013, order denying the defendant's motion to file an amended petition was based on his failure to meet his obligation to show why a subsequent petition should be allowed. The court further clarified that no ruling was made on the merits. The court then stated that its comments as to the substance of the motion were *dicta*, but that if the appellate court disagreed "all of the issues raised were reviewed and no gist of a constitutional claim was substantiated on any allegation."

¶ 29 On October 9, 2013, the defendant filed a notice of appeal from the circuit court's orders dated July 18, 2013 (the order dismissing his initial postconviction petition), September 12, 2013 (the order denying his motion for leave to file an amended petition), and September 25, 2013 (the order denying his motion to reconsider). On October 21, 2015, our supreme court directed this court to treat the defendant's notice of appeal as a properly perfected appeal from all three judgments.

¶ 30 Our review of the circuit court's dismissal of a postconviction petition is *de novo*. *People v. Brown*, 236 Ill. 2d 175, 184 (2010). The Post-Conviction Hearing Act provides a three-stage process for the adjudication of postconviction petitions in noncapital cases. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). Postconviction proceedings are

commenced by the filing of a petition, which clearly sets forth the respects in which petitioner's constitutional rights were violated. 725 ILCS 5/122-2 (West 2012). The postconviction petition need only present a limited amount of detail. *People v. Reyes*, 369 Ill. App. 3d 1, 12 (2006).

¶ 31 At the first stage, the trial court independently reviews and assesses the defendant's petition within 90 days of its filing, and if the court determines that the petition is "frivolous" or "patently without merit," the court can summarily dismiss it. 725 ILCS 5/122-2.1(a)(2) (West 2012); *Edwards*, 197 Ill. 2d at 244. A petition is frivolous or patently without merit where it has no arguable basis in either fact or law. *People v. Dobbey*, 2011 IL App (1st) 091518, ¶ 35. For a petition to have no arguable basis, it must be based on an indisputably meritless legal theory or a fanciful factual allegation. *Id.* To survive a summary dismissal, the postconviction petition, which is taken as true and is liberally construed, must allege the "gist" of a constitutional claim, which is a low threshold. *Reyes*, 369 Ill. App. 3d at 12. This requires that the petitioner plead sufficient facts to assert an arguable constitutional claim. *Dobbey*, 2011 IL App (1st) 091518, ¶ 35.

¶ 32 However, the low threshold at the first stage of the postconviction proceedings does not mean that a petitioner is excused from providing any factual detail surrounding the alleged constitutional violation. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). Section 122-2 of the Act provides that the petition shall have attached affidavits, records, or other evidence supporting its allegations or shall state the reasons why the documents are not attached. 725 ILCS 5/122-2 (West 2012). The purpose behind this requirement is to

establish that a petition's allegations are capable of objective or independent corroboration. *Hodges*, 234 Ill. 2d at 10. In making its decision as to whether to summarily dismiss the petition, the circuit court may examine the trial record, the court file of the proceeding in which the defendant was convicted, any action taken by the appellate court in such a proceeding, any transcripts of such proceedings, and affidavits or records attached to the petition. 725 ILCS 5/122-2.1(c) (West 2012); *People v. Brown*, 236 Ill. 2d 175, 184 (2010).

¶ 33 The allegations in the postconviction petition must be supported by the record in the original trial proceedings or by the affidavits filed with the petition. *People v. Simms*, 192 Ill. 2d 348, 359 (2000). Where the allegations are contradicted by the record, the postconviction petition is subject to dismissal. *Id.* However, where the petitioner's claims are based on matters outside the record, it is not the intent of the Act that such claims be adjudicated on the pleadings. *People v. Coleman*, 183 Ill. 2d 366, 382 (1998). Instead, the function of the pleadings is to determine whether the petitioner is entitled to an evidentiary hearing. *Id.*

¶ 34 A conviction obtained by the knowing use of perjured testimony violates a defendant's right to due process and should be set aside where there is any reasonable likelihood that the false testimony could have affected the jury's verdict. *People v. Olinger*, 176 Ill. 2d 326, 345 (1997). To establish a violation of due process, the prosecutor trying the case need not have known that the testimony was false; rather, knowledge on the part of any representative or agent of the prosecution is sufficient. *Id.*

at 347. In other words, the prosecution is charged with knowledge of its agents, which includes the police. *People v. Smith*, 352 Ill. App. 3d 1095, 1101 (2004).

¶ 35 The defendant asserts that he raised the gist of a constitutional claim in his postconviction petition where he argued that Detective Perry falsely testified at the suppression hearing that the inculpatory statement made by the defendant was the result of a spontaneous declaration and not continued questioning.

¶ 36 To protect an individual's right to not be a witness against himself, police interrogation must cease once the individual indicates in any manner and at any time prior to or during a custodial interrogation that he wishes to remain silent. *People v. Flores*, 2014 IL App (1st) 121786, ¶ 37. Statements that are made after the individual has invoked his right to silence are admissible only if the interrogators scrupulously honored the defendant's right to cut off questioning. *Id.* ¶ 58.

¶ 37 In determining whether a defendant's right to remain silent has been scrupulously honored, the courts should consider whether (1) the interrogator immediately halted the initial interrogation after the defendant invoked his right to remain silent; (2) a significant amount of time elapsed between the interrogations; (3) the defendant was "re-Mirandized" before the second interrogation; and (4) the second interrogation addressed a crime different from that of the first interrogation (though the fact that the same crime was discussed during both interrogations does not preclude a finding that the defendant's right to silence was scrupulously honored). *People v. Hernandez*, 362 Ill. App. 3d 779, 786 (2005).

¶ 38 In *People v. R.C.*, 108 Ill. 2d 349, 351-52 (1985), the minor defendant was taken into custody in connection with a burglary and informed of his *Miranda* rights. The minor defendant indicated that he did not wish to talk to the juvenile officer, who had informed the minor that he had that right, but he responded to the minor's invocation of his right to silence by claiming that a witness and the arresting officer had identified the minor as the offender. *Id.* at 352. The officer then asked the minor about the jewelry that was taken during the burglary, and the minor made inculpatory statements. *Id.*

¶ 39 Our supreme court concluded that the minor's invocation of his right to remain silent was not scrupulously honored because the officer did not immediately terminate the interview once the minor invoked his right to remain silent. *Id.* at 354. The court found that the officer's statement to the minor that he had been identified as the offender was made in an obvious effort to persuade the minor to make a statement. *Id.* Moreover, the court noted that no time had elapsed between the invocation of the right to remain silent and the officer's effort to persuade the minor to confess. *Id.* In addition, the court noted that the same officer immediately questioned the minor without fresh *Miranda* warnings about the same burglary for which he had been arrested and for which the officer was then in the process of giving the minor the required *Miranda* warnings. *Id.*

¶ 40 The defendant argues that the present case is similar to *R.C.* in that his postconviction petition had alleged that Detective Perry failed to scrupulously honor his invocation of his right to silence. The defendant's testimony at the suppression hearing indicated that as Perry was walking him to the jail, Perry told him that the police could not do anything for him and that he had to help himself by telling them that he did it.

This conversation occurred shortly after the defendant had invoked his right to silence. The defendant invoking his right to silence was shown in the first interview tape. The defendant was not re-Mirandized before the alleged conversation in the hallway took place.

¶ 41 Because his invocation of his right to silence was not scrupulously honored, the defendant contends that his second videotaped statement, in which he made an inculpatory statement, should have been suppressed. Although he acknowledges that the circuit court concluded that Detective Perry was a credible witness at the suppression hearing, the defendant contends that he has raised at least an arguable claim that Detective Perry lied at the suppression hearing. In support, the defendant points to the various newspapers articles attached to his postconviction petition, which detailed Perry's misconduct. Thus, the defendant contends that it is at least arguable that his suppression motion should have been granted and this court should reverse the summary dismissal of his postconviction petition and remand this cause for second-stage postconviction proceedings.

¶ 42 In support of this position, the defendant cites *People v. Mitchell*, 2012 IL App (1st) 100907, *People v. Almodovar*, 2013 IL App (1st) 101476, and *People v. Reyes*, 369 Ill. App. 3d 1 (2006), all cases where the appellate court remanded for second-stage proceedings where the defendant alleged that new evidence had been revealed with regard to the investigating officer's misconduct and that such evidence was material as to the officers' credibility. In *Mitchell*, 2012 IL App (1st) 100907, ¶ 62, the First District reversed the dismissal of defendant's postconviction petition, concluding that the



evidence of the investigating officer's perjury in similar cases involving alleged confessions significantly shifted the balance of credibility in the contest between the officer and the defendant's testimony about the voluntariness of his statements. The petitioner had attached documents to his postconviction petition relating to the pattern of criminal conduct committed by the police officers in that particular area, which included torture of suspects and perjury by the officers concerning confessions which were purportedly obtained from those suspects. *Id.* ¶ 33.

¶ 43 In *Almodovar*, 2013 IL App (1st) 101476, ¶¶ 60, 68, the First District reversed the dismissal of petitioner's successive postconviction petition and remanded for second-stage proceedings where the court found that the investigating officer's malfeasance in other cases was material to petitioner's claims of abuse in his particular case. As in *Mitchell*, the petitioner had attached newly discovered evidence in the form of a newspaper article which reported that the investigating officer had intimidated witnesses in an unrelated case into identifying a certain individual as the offender. *Almodovar*, 2013 IL App (1st) 101476, ¶ 55. Likewise in *Reyes*, the petitioners filed postconviction petitions arguing that their confessions were the product of physical abuse by the investigating officer. *Reyes*, 369 Ill. App. 3d at 13. The First District concluded that the petitioners had sufficiently set forth the gist of a constitutional claim in their petitions where they presented evidence that the officer had systematically used improper techniques to coerce false statements from suspects and civilians in other cases. *Id.* at 22-24.

¶ 44 In the present case, Detective Perry testified that the defendant's inculpatory statement was not the product of continued questioning and was instead a spontaneous admission that was made without any prompting by him. However, the fact that Detective Perry committed perjury in another criminal case raises an issue with his credibility. The State acknowledges that the use of perjured testimony is a violation of a defendant's constitutional right to due process and a fair trial. The State further acknowledges that the knowing use of perjured testimony at a suppression hearing is prejudicial where such testimony materially affected the court's ruling on the motion.

¶ 45 However, the State argued that even had the court concluded that Detective Perry was lying about whether he honored the defendant's right to remain silent, the defendant suffered no prejudice as the result at the suppression hearing would have been the same. The State points to this court's previous order on direct appeal to support its argument that the evidence was not closely balanced. Furthermore, the State noted that the jury heard testimony from three witnesses who saw the defendant in the vicinity of the location where Britton was shot on the night in question. Two of the witnesses testified they observed the defendant approach Britton while carrying a gun, observed the defendant fire the gun, and Britton fall backward. Thus, the State argued that the jury would have convicted the defendant even if it had never heard the defendant's inculpatory statement in the second video interview.

¶ 46 Although this court had previously concluded that there was sufficient evidence to prove the defendant guilty beyond a reasonable doubt in its prior order on direct appeal, we recognize that this conclusion was based on an analysis of the evidence that included

the inculpatory statement that was made by the defendant in the second interview and was shown to the jury. The remaining evidence consists of the above detailed witness testimony that was elicited during Perry's investigation into the shooting. Perry was the officer who interviewed these testifying witnesses. In addition, the defendant, in his postconviction petition, indicated that Beamon had provided a notarized affidavit stating that Perry had threatened him into making a false statement implicating the defendant. Moreover, the witnesses all admitted that they had been using drugs on the night in question. Thus, we conclude that the defendant has alleged the gist of a constitutional claim that Detective Perry did not scrupulously honor his invocation of his right to remain silent.

¶ 47 The State further argues that the second interview was admissible because the defendant freely and voluntarily submitted himself to further questioning after invoking his right to remain silent. However, we note that this argument was rejected in *R.C.* where our supreme court concluded that that there was no support for the State's contention that when an interrogating officer fails to scrupulously honor the suspect's invocation of his right to silence and then obtains a statement, the appropriate standard for determining the admissibility of that statement is only whether the suspect voluntarily waived his right to silence. *R.C.*, 108 Ill. 2d at 355.

¶ 48 The State's last argument is that proof of a single instance of perjury in another proceeding did not, as a matter of fact, establish the gist of a constitutional claim in this case. The State argues that a single, isolated incident of perjury which occurred years after the defendant's case did not establish a systematic pattern of misconduct that casts

doubts on Detective Perry's veracity in the present case. In support of this position, the State noted that the cases relied on by the defendant, and discussed above, involved a systematic pattern of misconduct involving abuse, improper interrogation methods, and perjury. We disagree with the State's contention. As noted by the defendant in his brief, the newspaper articles attached to the defendant's postconviction petition indicate that this single instance of perjury undermined Perry's credibility in unrelated, pending cases as far as the State's Attorney was concerned. The articles reported that as a result of Perry's perjury, the State's Attorney's office would be reviewing all pending cases involving Perry and would refuse to file any charges in which Perry was the charging officer. Thus, the defendant has at least set forth an arguable basis for consideration of this issue in his postconviction petition.

¶ 49 Further, the circuit court summarily dismissed the defendant's postconviction petition on the basis that it was filed without support of affidavits and was a conclusory pleading. The court also dismissed the defendant's amended postconviction petition on the basis that the defendant failed to meet his obligation to show why a subsequent petition should be allowed. As previously discussed, a *pro se* petitioner is not expected to set forth a complete and detailed factual recitation. Instead, the petitioner is required to plead sufficient facts to assert an arguable constitutional claim. We have already concluded that the defendant has met this burden in his postconviction petition.

¶ 50 In addition, although we recognize that the failure to attach the necessary affidavits, records, or other evidence or explain their absence is fatal to a postconviction petition in that it justifies the petition's summary dismissal, we note that the defendant

provided an explanation as to why he did not attach any affidavits to support his claim. Specifically, in his motion for leave to file the amended petition, he explained that he did not learn until the court dismissed his initial petition that his own affidavit was not attached to the petition and had been inadvertently lost and omitted. He thereafter attempted to file an amended petition reattaching his own notarized affidavit to the amended petition to correct this deficiency. He also provided an explanation as to why he could not offer any other affidavits, other than his own, to support his contentions. We also note that the defendant attached other evidence in the form of newspapers articles to support his claims. Thus, we conclude that the circuit court's summary dismissal of the defendant's postconviction petition for his failure to provide any affidavits must be reversed.

¶ 51 For the reasons stated, the circuit court's dismissal of the defendant's first-stage postconviction petition is reversed and the cause is remanded for second-stage postconviction proceedings under the Act.

¶ 52 Reversed and remanded.