

2026 IL App (2d) 250205-U
No. 2-25-0205
Order filed October 23, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

ALFREDO SOTO, Defendant-Appellant.

Appeal from the Circuit Court of Kane County.
Honorable Bianca Camargo, Judge, Presiding.
No. 16-CF-1310

PRESIDING JUSTICE KENNEDY delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in dismissing defendant's postconviction petition at the second stage, because defendant's petition failed to make a substantial showing that his appellate counsel provided ineffective assistance. Affirmed.

¶ 2 Defendant, Alfredo Soto, appeals from the dismissal of his postconviction petition at the second-stage of postconviction proceedings. On appeal, he argues that the dismissal was improper because he made a substantial showing that his appellate counsel was ineffective on direct appeal for not challenging the trial court's refusal to give an adverse-inference jury instruction based on the State's failure to preserve a recording of defendant speaking with the 911 operator from his home residence on August 1, 2016 (the 911 call). For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was indicted on October 5, 2016, of two counts of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2016)) for the shooting death of Martiniano Alvarez. The offense was alleged to have occurred on August 1, 2016, at the Latin American Club (the Club) in Aurora, Illinois.

¶ 5

A. Jury Trial and Direct Appeal

¶ 6 Following a jury trial in 2018, defendant was convicted of first-degree murder. In addition to the guilty verdict of first-degree murder, the jury found that the State proved the allegation that, during the commission of the offense of first-degree murder, defendant personally discharged a firearm that proximately caused death to another person.

¶ 7 Defendant directly appealed his conviction, arguing that his trial counsel was ineffective for several reasons. See *People v. Soto*, 2021 IL App (2d) 180925-U, ¶ 52. We affirmed his conviction, holding that the issues raised were matters of trial strategy and that defendant could not establish prejudice. *Id.* ¶¶ 69-70. We specifically found that “the evidence of defendant’s guilt was overwhelming,” noting that the security footage confirmed that defendant shot the victim without provocation and in cold blood, that bar patrons and the bartender testified that the victim did not threaten defendant, and that the police investigation established that the victim was unarmed. *Id.* ¶ 70. As to self-defense, we stated that “there was no evidence corroborating [defendant’s] testimony.” *Id.*

¶ 8 Our order on defendant’s direct appeal recounted much of the relevant testimony and evidence from his trial proceedings. See *id.* ¶¶ 4-50. Here, we summarize and supplement the recitation of the proceedings as follows.

¶ 9 At trial, the State called various police officers to testify to the investigation of Alvarez's shooting. Officer Katelyn Groom testified that she responded on August 1, 2016, to the Latin American Club, where she observed Alvarez lying unresponsive on the floor near the front door; there was a large pool of blood under his head. She testified that Alvarez did not have or possess a firearm or other weapon on his body. Officer Brian Hammond, who responded to the Club that evening to a dispatch call for a gunshot victim, saw Alvarez being moved by medics onto a stretcher but did not observe any gun on or under Alvarez's body.

¶ 10 Officer Christopher Bosson testified that he responded to defendant's residence in the aftermath of the shooting. Dispatch advised that defendant would come out of the house in his underwear with his hands up, and that is what happened: defendant willingly surrendered.

¶ 11 Officers executed a search warrant at defendant's residence to search for clothes, including a plaid shirt, and a .380 semi-automatic handgun. They found the shirt in a liquid-filled bucket in the upstairs bathroom with a bottle of bleach next to the bucket. The liquid smelled like bleach. Officers discovered the firearm in the basement in the corner inside a water cistern on top of rubble, with a cardboard box covering part of the gun. The firearm, which was collected into evidence, had the hammer cocked and the safety off; a round was in the chamber.

¶ 12 Laura Gonzalez testified that, on August 1, 2016, she was tending bar at the Club. Defendant, who was a regular at the Club, was present with two other Club regulars, Miguel Hernandez and Domingo Anya. Alvarez was also at the Club, but she did not know him as a regular. Both defendant and Alvarez ordered rounds "for everyone." At some point, Alvarez moved to sit near defendant at the bar, and defendant introduced himself. She was sitting right behind the bar, and she heard their conversation. The four men—defendant, Alvarez, Hernandez, and Anya—were talking, mostly about where they were from in Mexico. She did not hear any raised voice or threats,

and she did not hear anyone say, “I am going to kill you.” Anya and Rodriguez each testified consistently with Gonzalez’s testimony in that they heard no arguments nor any threats that evening while they, defendant, and Alvarez were socializing at the bar. Gonzalez never saw Alvarez with a gun.

¶ 13 Gonzalez continued testifying that, around 6:30 p.m., defendant stood up and walked toward the entrance of the Club, and Alvarez followed him. As Alvarez walked toward defendant, she heard the first gunshot. She looked up and saw defendant’s arm raised toward Alvarez, and she heard three more gunshots. After the gunshots, Hernandez and Anya ran toward the beer garden, but it was closed off. Hernandez and Anya came running back, and she heard Anya say, in Spanish, “Soto, what did you do?” He and Hernandez then ran out the front door. Gonzalez remained at the bar to call 911. In the audio recording of her 911 call, she can be heard speaking frantically and telling the operator that “he shot him all over, he shot him in the head, he shot him everywhere.” She described the shooting as “they were here drinking, he called him to the door, and he just shot him.” She heard three or four shots, and she later identified defendant as the shooter.

¶ 14 Kathy Sheldon testified that she lived in Aurora with her husband and his brother in a two-story family home, and they had rented a room to defendant, who was a family friend. On August 1, 2016, defendant was living at their home and returned home sometime after 6:30 p.m. He was a “little hurried and rushed” and “frantic going room to room.” As best she could remember, she asked him what was wrong, and he said something to the effect of “he didn’t know this was the end of his life, the way his life was going to be.” She did not know what he was talking about. Defendant took off his clothes down to his underwear, and then he asked her to call 911. She gave him her phone, and he sat down in his underwear and called 911. By the time he called 911, she

believed he had mentioned that he had shot someone. He also mentioned that he had hid a gun in the basement “where nobody would be able to find it.”

¶ 15 Marisol Alvarez, Martiniano Alvarez’s wife, testified that she had been married to Martiniano for six years. He was 31 years old at the time of his death, and he had worked laying blacktop for a company called Evans and Sons. He had never owned a gun, and she had never seen him with a gun. She continued testifying that he did not use illegal drugs, did not have tattoos, and had never been arrested for anything other than a traffic offense. She permitted the police to search their apartment and Martiniano’s cell phone and truck, and to her knowledge, the police did not recover anything from those searches.

¶ 16 The State provided security video footage from the Club on August 1, 2016. The footage showed that defendant, who was wearing a cowboy-style hat, dark pants, and a plaid shirt, was present at the Club with Domingo Anya and Miguel Rodriguez, and the three men had drinks at the bar. Alvarez entered the Club through the front door just before 6:02 p.m. and sat at the end of the bar. Alvarez moved toward the three men at the bar around 6:32 p.m., shaking hands with all three men, including defendant last with a fist bump after the handshake. Alvarez then sat down at the bar between Anya and Rodriguez.

¶ 17 At approximately 6:39 p.m., defendant walked from the bar to the front door of the Club and stopped. Alvarez stood up from his seat between Anya and Rodriguez and walked toward defendant at the door. When he was close to defendant by the door, defendant shot Alvarez four times, and Alvarez slumped along the wall next to the door. Rodriguez and Anya attempted to flee the Club, and Gonzalez can be seen crouching and moving from behind the bar before returning to the bar to use the phone. Defendant left the Club through the front door at 6:40 p.m. The video

is consistent with the opinion of the State's forensic pathologist, Mitra Kalelkar, that Alvarez's cause of death was cranial-cerebral injuries from a gunshot wound to his head.

¶ 18 After the court denied the defense's motion for a directed verdict, defendant testified on his own behalf. He testified that, following a divorce, he began drinking heavily and using cocaine, but he had not used cocaine since December 12, 2015, and he had reduced his drinking since then to a couple times a week. Since quitting cocaine, he had been approached at the Club by persons attempting to sell him cocaine approximately five times, but he said no each time. In February 2016, he testified that he was attacked in the Club parking lot around 10 p.m. Two men jumped out of an SUV; one hit him with a golf club, and the other kicked him while he was on the ground. Defendant did not get a good look at the men. One of the men told him that next time he would be "gone for good" in broken English. Afterward, defendant bought a gun for protection.

¶ 19 Defendant testified that on August 1, 2016, he was at the Club and a man he did not recognize (Alvarez) came into the Club and sat at the corner of the bar. Alvarez said to him "that he had a message from La Familia, and he was there to kill me." When defendant was walking toward the front door of the Club, he heard Alvarez say to stop because he was going to kill him. Defendant kept moving to the door but stopped at the door to see if anyone was in the parking lot. Alvarez then walked toward him, and defendant saw him reach toward his waist. Defendant thought Alvarez was going to pull a gun, and defendant shot him multiple times. Defendant admitted he never saw Alvarez with a gun.

¶ 20 After the shooting, defendant went home and put the gun in the basement "[b]ecause there were people in the house." He agreed on cross-examination that this was not where he had been keeping his gun for months. After he put the gun in the basement, he went upstairs and asked Sheldon to call 911. He testified that he was dressed during the call, and the 911 operator told him

to take off his clothes down to his underwear and come out the front door with his hands behind his neck. He denied putting his shirt in a bucket of bleach. After he disrobed, he exited the home out the front door.

¶ 21 Sylvia Alvarez had worked for the Club as a manager, and she testified that she had witnessed Martiniano Alvarez (no relation to her) say he would kill defendant on three different occasions prior to August 1, 2016; on the third occasion, she kicked him out of the Club.

¶ 22 Officer Jason Cudebec testified for the defense as follows. He handled the CD with the 911 call in this case. In his synopsis of the case, he referred to both the 911 call (from Sheldon's phone) and Gonzalez's 911 call from the bar. He received two disks from AP Telecom on August 11, 2017, and the disks sat in his case file. By the time he checked the contents of the disks and discovered that the 911 call was not on it, AP Telecom had overwritten the 911 call recording.

¶ 23 The defense also called Jesse De La Cruz as an expert in Mexican cartels. He testified to cartel operations generally, but he did not offer any opinion on whether Alvarez was a cartel hitman or whether defendant had been targeted by a cartel.

¶ 24 The State called several witnesses in rebuttal. Alex Martel testified that he was the treasurer of the Club and that he sold Alvarez a membership to the Club in the summer of 2016. Officer Joshua Mendez testified that he had interviewed Sylvia Alvarez (at the time she gave her name as Sylvia Leon) on August 1, 2016, and she never stated that Alvarez had threatened defendant. Officer Cudebec was recalled and testified that he interviewed Sylvia Alvarez on August 8, 2018, after learning that she had given a statement to the defense in April 2018. On August 8, she reported to Cudebec that Alvarez had made three threats to defendant.

¶ 25 After the close of the evidence, the trial court conducted a jury instruction conference where, among many other instructions, it considered the defense's proposed non-IPI (Illinois

Pattern Jury Instruction) instruction regarding the 911 call. The proposed instruction stated that if the jury found that the State allowed evidence to be destroyed, the jury could infer the fact against the State's interest. The court declined to give the instruction, explaining that the police never had the 911 call in their possession and therefore never lost or destroyed it.

¶ 26 In closing argument, the State argued in opening that it had disproved the justification of self-defense because, in part, self-defense required defending against the *imminent* use of unlawful force, meaning a person cannot defend themselves in retaliation for a past wrong or to prevent something "that is going to happen far off in the future," and no imminent threat of death or great bodily harm existed. In other words, as the State put it, "[y]ou can't preemptively strike someone." Accordingly, the State also argued that defendant's belief that the circumstances warranted the shooting was unreasonable. Regarding defendant's subjective belief that the circumstances warranted the shooting, the State argued that the evidence did not support such an honest belief, including defendant's actions when he returned home, noting that he did not tell Sheldon that he just saved himself from an assassin but instead was "rummaging around to bleach his shirt and hide a gun."

¶ 27 The defense argued that, although there was "no doubt" that defendant shot Alvarez, he was justified in doing so. As to the evidence regarding defendant's shirt and gun after the shooting, "the State argued, well, [defendant] tried to hide the evidence. That means he killed Alvarez." The defense continued that, per the State, "[t]here's a shirt in bleach. Oh, my God, it's first-degree murder; bleach, shirt, water. The gun is in the basement." The defense argued that, contrary to the State's position, people do not always respond normally to an abnormal situation, and the shirt in the bleach did not mean that defendant felt he was guilty of first-degree murder. In fact, the defense argued the evidence was unclear who even put the shirt in the bucket of bleach.

¶ 28 In rebuttal, the State argued many points at length, with one of the final points being to ask the jury, “Did the 911 operator tell him to put his shirt in a bucket? Did the 911 operator tell him to hide his gun? Is the gun in plain view? Is this where you store your gun when you’re home?” The State continued that defendant “hid [the gun] because he was trying to destroy and hide evidence. Eye of the killer; hide the gun, get rid of the shirt, walk away slowly to your car and go home, take care of all your business and then ask someone to call 911.”

¶ 29 The trial court provided various jury instructions, including a second-degree murder instruction based on the mitigating factor of an unreasonable belief, in that, at the time of the killing, defendant believed circumstances existed justifying his use of deadly force. The jury was instructed that it could find defendant not guilty of first-degree murder, guilty of first-degree murder, or guilty of second-degree murder.

¶ 30 Following the jury’s guilty verdict for first-degree murder, defendant filed a motion for a new trial. The motion raised myriad claims of error, including that the trial court erred by not allowing the defense’s non-IPI jury instruction concerning lost or destroyed evidence. The court denied the motion and sentenced defendant to 60 years’ imprisonment.

¶ 31 B. Postconviction Petition

¶ 32 Defendant filed his *pro se* postconviction petition on October 7, 2021. His petition raised three issues: (1) whether a *Brady* violation occurred at trial, (2) whether he received ineffective assistance of both trial and appellate counsel related to the State’s failure to preserve the 911 call, and (3) whether he received ineffective assistance of trial counsel for failing to strike several jurors. On January 6, 2022, the trial court ordered that the petition advance to the second stage and appointed defendant postconviction counsel.

¶ 33 Through postconviction counsel, defendant filed his amended postconviction petition on June 12, 2024. The amended petition alleged two main claims. First, it alleged ineffective assistance of trial counsel in that counsel failed to object to the State’s closing argument regarding defendant’s call with the 911 operator, the recording of which had been deleted and unpreserved, and failed to request an appropriate sanction for the 911 call’s destruction. Second, the amended petition alleged ineffective assistance of appellate counsel for failing to argue on direct appeal that the State improperly benefitted from the missing 911 call and for failing to argue that trial counsel was ineffective for not requesting an appropriate sanction for the 911 call’s deletion.

¶ 34 Defendant attached an affidavit to his petition, averring to the contents of the 911 call as follows. The 911 operator instructed him to “undress down to my under-wear [*sic*] to show that I was unarmed,” and he complied. The 911 operator also asked him where the weapon was, and he replied that he had placed it in the basement on a cardboard box because there were other people in the house. The 911 operator then told him to exit the house with his hands behind his head, which he did.

¶ 35 Defendant’s affidavit continued that the content of his affidavit affected the outcome of his case “because the State alleged that I tried to cover up the evidence, stating that they found my shirt inside a bucket full of bleach water and that I hid the gun inside of the sistern [*sic*] down in the basement *** [s]tating that it shows premeditation by me.” Had the 911 call been available at trial, he would have been able to use it to effectively respond to the State’s argument and prevent the State from undermining his testimony and credibility.

¶ 36 The State moved to dismiss the postconviction petition. The State contended that defendant was not prejudiced by the missing 911 call, noting that defendant testified in his own defense as to what the 911 operator instructed him to do and that the 911 call would not help establish any

element of his claim of self-defense. Furthermore, the State argued that the appellate court had found that the evidence of defendant's guilt was overwhelming, with the offense captured on video footage.

¶ 37 On March 7, 2025, the trial court heard the amended petition and motion to dismiss. At the hearing, postconviction counsel argued that the State benefitted from the missing 911 call and that the appropriate sanction for the State's loss of the 911 call, which defendant's trial counsel should have requested and appellate counsel should have argued on appeal, "would have been the evidence of what was on that 911 call" as stated in petitioner's affidavit. That is, the requested sanction should have been for "a stipulation uncontested of exactly what was on that tape." In sum, postconviction counsel argued that the 911 call offered exculpatory evidence with respect to defendant's self-defense claim, including that he did not hide his gun. The State replied, in part, that defendant's conduct after the shooting had no bearing on the factors required to establish self-defense, which factors "focus on the crime as it is unfolding." The State continued that, in other words, defendant's post-shooting conduct "certainly wasn't crucial evidence in the case."

¶ 38 On May 8, 2025, the trial court orally granted the State's motion to dismiss defendant's second-stage postconviction petition, with a written order explaining its decision entered the following day. The court's written order explained that "[e]ven when construing [defendant's] post-conviction petition liberally," defendant could not show ineffective assistance of trial counsel, because the trial court had already denied counsel's request for a jury instruction regarding the 911 call and also had allowed defendant to present evidence of the 911 call through his own testimony. Furthermore, trial counsel was not ineffective for failing to object to the State's closing rebuttal to the defense's closing argument regarding the 911 call. The court continued that, since trial counsel

was not ineffective, defendant's claim of ineffective assistance of appellate counsel must fail too. The court dismissed the amended petition with prejudice, and defendant timely appealed.

¶ 39

II. ANALYSIS

¶ 40 Defendant argues that the trial court erred in dismissing his second-stage postconviction petition because his appellate counsel was ineffective for failing to challenge the trial court's refusal to give the jury an adverse-inference instruction in response to the State's failure to preserve the 911 call. Defendant contends that an adverse-inference instruction would have precluded the State from arguing at trial that his post-shooting conduct—particularly, removing his clothing and placing the gun in his basement—showed a consciousness of guilt, and, therefore, such an instruction would have allowed the jury to conclude that the 911 call supported his claim of self-defense. Defendant continues that the 911 call contents corroborate his testimony that he removed his clothing not to hide incriminating evidence but to comply with the 911 operator's directive and that he left the gun in the basement not to hide incriminating evidence but to protect his roommates.

¶ 41 Defendant further argues that the trial court's refusal to issue an adverse-inference instruction was prejudicial because it would have prevented the State from arguing during closing that his post-shooting actions were consistent with a guilty mind. Defendant asserts that this case had competing witness testimony that "boiled down to a credibility contest," and that the 911 call reasonably could have led the jury to credit his self-defense theory over the State's case.

¶ 42 The State responds that the trial court's dismissal of defendant's postconviction petition was proper because defendant failed to make a substantial showing that his appellate counsel was ineffective in not raising the issue on direct appeal.¹ It argues that appellate counsel exercised

¹The State also raises the application of forfeiture to defendant's claim, but its argument is amiss. Defendant's alleged constitutional violation is ineffective assistance of appellate counsel, which could not

sound judgment by not pursuing a meritless claim where the trial court found that the police never had the 911 call in their possession and that defendant received an adequate remedy in allowing him to testify to the 911 call. The State further argues that defendant cannot establish prejudice, because the State did not benefit from the 911 call's absence. The State contends that counsel's closing argument addressing the missing 911 call was invited by defendant's closing argument, regardless of any adverse-inference instruction, and was based on evidence neither disputed nor explained by the 911 call (*e.g.*, defendant placing his clothing in a bucket filled with bleach).

¶ 43 The State also argues that this court's finding that the evidence of defendant's guilt was overwhelming (see *Soto*, 2021 IL App (2d) 180925-U, ¶ 61) is law of the case. The State highlights that the evidence at trial established, *inter alia*, that Alvarez was unarmed, that he was shot with a downward trajectory inconsistent with an advancing threat, and that the entire shooting was captured on video. Finally, the State argues that the 911 call was irrelevant to the issue of self-defense because the 911 call would purportedly explain only defendant's post-shooting actions, not whether he shot the victim in reasonable fear of an imminent threat.

¶ 44 We agree with the State that defendant cannot establish the prejudice prong of his claim on ineffective assistance of appellate counsel. Accordingly, for the following reasons, we hold that

have been raised on direct appeal. *Cf. People v. Janusz*, 2024 IL App (2d) 22-348, ¶ 27 (claims that could have been raised on direct appeal are barred by forfeiture). Even if defendant were trying to raise a constitutional violation that occurred at trial as opposed to one on direct appeal, “[w]hen a petitioner is asserting claims that could have been raised on direct appeal, he can avoid the procedural bar of forfeiture by casting his claims as ineffective assistance of appellate counsel for failing to raise the issues on direct appeal.” *People v. Addison*, 2023 IL 127119, ¶ 23. Thus, forfeiture has no application to this appeal; the issue is whether defendant's claim of ineffective assistance of appellate counsel has merit.

the trial court properly dismissed defendant's postconviction petition at the second stage for failing to make a substantial showing of a constitutional violation.

¶ 45 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2020)) allows criminally convicted individuals to challenge their convictions by raising constitutional violations. *People v. Domagala*, 2013 IL 113688, ¶ 32. The Act provides a three-stage process for adjudicating postconviction petitions. *People v. Shipp*, 2015 IL App (2d) 131309, ¶ 6. At the first stage, the trial court examines the petition without input from the State and determines whether the petition is frivolous or patently without merit. *People v. Turner*, 2012 IL App (2d) 100819, ¶ 18. If the court does not dismiss the petition as frivolous or patently without merit, the petition advances to the second stage, where the court may appoint counsel for the defendant and the State enters the litigation. *People v. Tate*, 2012 IL 112214, ¶ 10.

¶ 46 At the second stage, the defendant bears the burden of making a substantial showing of a constitutional violation. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). The State may move to dismiss the petition, and only if the allegations in the petition, supported by the record and affidavits, demonstrate a substantial violation of a constitutional right will the petition proceed to the third stage for an evidentiary hearing. *People v. Turner*, 2012 IL App (2d) 100819, ¶ 19-20. In assessing whether the defendant has met their burden, all well-pleaded facts that are not positively rebutted by the record are taken as true. *Pendleton*, 223 Ill. 2d at 473. We review *de novo* the dismissal of a postconviction petition at the second stage. *People v. Johnson*, 2017 IL 120310, ¶ 14.

¶ 47 For a claim of ineffective assistance of appellate counsel, the defendant must satisfy the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. English*, 2013 IL 112890, ¶ 33. That is, the defendant must show (1) that his appellate counsel's performance was deficient and (2) that, but for counsel's errors, there was a reasonable probability

that the appeal would have been successful. *Id.* A failure to establish either prong of the *Strickland* test precludes a finding of ineffectiveness. *People v. Peterson*, 2017 IL 120331, ¶ 79. The prejudice prong requires that we examine the merits of claims not raised by appellate counsel. *People v. Delgado*, 2022 IL App (2d) 210008, ¶ 26. Appellate counsel is not required to raise an issue that they reasonably determine lacks merit. *English*, 2013 IL 112890, ¶ 34.

¶ 48 Here, defendant cannot establish the prejudice prong. First, as we noted on defendant's direct appeal, the evidence of defendant's guilt was overwhelming, with the security video footage capturing defendant's shooting of the victim. *Soto*, 2021 IL App (2d) 180925-U, ¶ 70. Defendant testified at trial that he shot Alvarez multiple times, going so far as to answer on cross-examination whether he had to deliberately pull the trigger for each shot by stating "Ma'am, I was trying to kill. Yes, I did pull the gun and pull the trigger, yes, ma'am." Thus, the only relevant question is whether arguing for an adverse-inference instruction on the 911 call had a reasonable probability of the appellate court reversing the jury's verdict based on a self-defense justification or a mitigating factor for second-degree murder (see 720 ILCS 5/9-2(a)(2), (c) (West 2016)). We hold that arguing for the adverse-inference instruction would not have reasonably affected the outcome of the appeal.

¶ 49 Critically, the evidence of defendant's post-shooting conduct had no relevance to the establishment of a self-defense justification or a mitigating factor for second-degree murder. The justification of use of force in defense of a person, *i.e.*, self-defense (720 ILCS 5/7-1 (West 2024)), has six elements: (1) that unlawful force was threatened against the defendant; (2) that the defendant was not the aggressor; (3) that the danger of harm was imminent; (4) that the use of force was necessary; (5) that the defendant actually and subjectively believed a danger existed that required the use of force; and (6) that the defendant's belief was objectively reasonable. *People v. Lee*, 213 Ill. 2d 218, 225 (2004). Once a defendant raises self-defense, the State has to prove

beyond a reasonable doubt that the defendant did not act in self-defense, which it can do by negating any single element of self-defense. *Id.* at 224-25. In this case, the evidence of defendant's post-shooting actions at his home had no direct bearing on the elements of self-defense, such as whether the danger of harm was imminent or whether defendant was the aggressor. As the video of the shooting shows, defendant pulled a gun on Alvarez in the Club and shot him in front of other patrons. Alvarez was unarmed, and the video does not show him making any obviously threatening movements. Even if the jury were to believe that Alvarez had previously verbally threatened to harm defendant, self-defense requires a present, not a future, threat of harm (*People v. Robinson*, 375 Ill. App. 3d 320, 336 (2007)), as well as the *necessary* use of force in defense; the evidence adduced at trial did not reasonably support a present threat at the Club nor a need to use deadly force against Alvarez at that time. Regardless, nothing alleged to be on the 911 call has any bearing on this analysis.

¶ 50 As to the presence of a mitigating factor for second-degree murder, defendant's post-shooting conduct likewise bears no significant relevance. Defendant's claim of imperfect self-defense required that there be sufficient evidence that he believed he was acting in self-defense, but that his belief was objectively unreasonable. *People v. Guy*, 2025 IL 129967, ¶ 42 (examining 720 ILCS 5/9-2 (West 2024)). His post-shooting conduct simply does not show whether he believed, reasonably or not, whether a threat was imminent or whether force was necessary. The State was trying to make a reasonable inference from the post-shooting conduct to show a consciousness of guilt, but the evidence of defendant's post-shooting conduct is both subject to competing reasonable inferences, such as the inference raised by the defense at trial (defense counsel reasonably argued that we should not expect normal responses to abnormal situations), and ancillary to the establishment of the elements of imperfect self-defense. The jury heard all the

evidence from the Club and the events leading up to the shooting, including defendant's testimony, and it concluded that defendant did not believe that a deadly threat was imminent, reasonable or not. In short, even if the State had been precluded from arguing anything about defendant's post-shooting conduct, we see no reasonable probability that the jury would have found the mitigating factor of imperfect self-defense present, much less that the shooting justified. Accordingly, an appeal of the adverse-inference instruction issue would have lacked merit, and appellate counsel was not required to raise it.

¶ 51 As a final note, even if the trial court had given an adverse-inference instruction to the jury regarding the 911 call, the State still could have argued that defendant's shirt was found in a bucket of bleach and that, prior to the 911 call, defendant placed his gun in a spot of the basement where defendant did not normally store the gun.² The facts supporting these assertions were already in the record (with defendant's own testimony supporting his placement of the gun prior to the 911 call) and are not contradicted by defendant's affidavit. In fact, the 911 call as described by defendant's affidavit has no relation to defendant's shirt being found soaking in bleach.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 54 Affirmed.

²Contrary to the State's assertion, the State did not argue defendant's post-shooting conduct only in rebuttal closing argument but also argued it in its opening closing argument. See *supra* ¶ 26.