No. 122227

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-16-0449
Respondent-Appellee,	)	
	)	There on Appeal from the Circuit Court of the Sixth Judicial Circuit,
v.	)	Champaign County, Illinois, No. 08-CF-1424
	)	
GRANVILLE JOHNSON,	)	The Honorable John R. Kennedy,
Petitioner-Appellant.	)	Judge Presiding.

BRIEF OF RESPONDENT-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

ISSUES PRESENTED FOR REVIEW

1. Whether litigants may raise new claims in motions for reconsideration.

2. Whether there is a right to counsel at the first stage of a postconviction proceeding.

3. Whether petitioner's ineffective assistance claims are meritless.

STATUTES INVOLVED

§ 122-1. Petition in the trial court.

* * *

(f) Only one petition may be filed by a petitioner under this Article without leave of the court. Leave of court may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure. For purposes of this subsection (f): (1) a prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings; and (2) a prisoner shows prejudice by demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process.

725 ILCS 5/122-1(f).

§ 122-3. Waiver of Claims. Any claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived.

725 ILCS 5/122-3.

§ 122-4. Pauper Petitions. . . . If appointment of counsel is . . . requested, and the petition is not dismissed pursuant to Section 122-2.1, the court shall appoint counsel if satisfied that the petitioner has no means to procure counsel. . . .

725 ILCS 5/122-4.

STATEMENT OF FACTS

Petitioner Granville Johnson was charged in the Circuit Court of Champaign County with the murder of Gregory Moore and the attempted murder of Gregory's cousin, Isaac Moore.[1] C1-24; Vol. XXXIV at 327. Petitioner's first two jury trials ended in mistrials. Vol. XXI at 99; Vol. XXVII at 110. At petitioner's third trial in August 2009, Isaac testified that petitioner, whom he had known for years and was able to observe "clear as day," was the person who shot him and Gregory. Vol. XXXIV at 344, 357-58, 370. Isaac related that Gregory drove him to a residence on Roper Street in Champaign on the evening of July 30, 2008, to "see [petitioner]" and "pick up weed"; that Gregory and petitioner entered the residence while Isaac waited in the passenger seat of Gregory's van; and that, after Gregory returned to the van, petitioner approached the driver's side window, said something to Gregory, and began shooting into the van. *Id.* at 329-32, 335-37, 339-42. Isaac testified that petitioner shot him once in the van and again as he fled, and the parties stipulated that a pathologist would testify that Gregory was shot twice in the head at close range. *Id.* at 343-45, 400-03. Isaac acknowledged that he had previously told petitioner's attorneys — falsely — that he "didn't know" who shot him and Gregory, but he explained that he did so only because he feared for his family's safety. *Id.* at 354-57, 381-385.

[1] The People cite the common law record as "C"; the report of proceedings by volume and page number; petitioner's brief as "Pet. Br."; and petitioner's appendix as "A".

Isaac also testified that he and Gregory were working as informants for the Champaign Police Department at the time of the shooting, *id.* at 387-88, and their handler, narcotics officer Jaceson Yandell, confirmed that testimony, Vol. XXXV at 426, 443, 446, 448-50. Yandell added that Gregory provided him with information about petitioner as part of his work as an informant; that two of petitioner's "associate[s]," drug dealer Otis Powell and Stanley Roundtree, learned of Gregory's informant status after they observed Gregory participating in a controlled buy involving two other drug dealers, Norberto and Octaviano Sanchez; and that Powell later shot Gregory and Isaac. *Id.* at 426, 429-30, 445, 450-52, 454-55, 457. Yandell further testified that he worried about Gregory's safety after Powell and Roundtree learned of his informant status during the Sanchez buy and that the first thing he did after learning of Gregory's murder was search his notes from his conversations with Gregory for information on petitioner. *Id.* at 429-30, 454-55.

In an attempt to show that other drug dealers had a similar motive to kill Gregory and Isaac, one of petitioner's attorneys elicited from Yandell on cross-examination that Gregory provided Yandell with information that led to the seizure of drugs from the home of Brandon Baker and the arrest of Baker's supplier, Fidel Garcia, and that Gregory participated in several controlled buys of cannabis from Edmundo Alvarado. *Id.* at 443-45. But Yandell testified on redirect that, so far as he knew, Baker, Garcia, Alvarado, and the Sanchezes never learned that Gregory was an informant:

> Q. Now . . . Mr. Baker, and Mr. Garcia, Mr. Alvarado, and the two Sanchezes, to your knowledge did any of those individuals ever learn by any means the identity of Gregory Moore?
>
> A. No, they did not.

Id. at 453. Yandell further testified that most of these other dealers were in custody when Gregory was killed:

> Q. At the time that Gregory Moore was killed, were you aware of whether . . . Mr. Baker, Mr. Garcia, and Mr. Alvarado and the Sanchezes were actually in the custody of a law enforcement agency?
>
> A. Yes, they were, other than Octaviano Sanchez, who we learned fled back to Mexico.

Id. at 454.[2]

When defense counsel questioned Yandell again on recross-examination, Yandell explained that he had "done [cases] on" the other drug dealers and that his knowledge of Octaviano's whereabouts came from "confidential sources":

> Q. [Y]ou said that all of these Mexican men . . . except for Octaviano Sanchez w[ere] in custody on the date of the murder. . . . Do you have a report that you've drafted that indicates that's true, and from what source you got it?
>
> A. They're individual cases that I've done on these individuals. It's in the Champaign Police Department records.
>
> * * *

[2] Petitioner's counsel's earlier objection to a similar question by the prosecutor was sustained, but counsel did not object again when the prosecutor rephrased the question. *Id.*

Q. One last question about Octaviano Sanchez. You said he fled back to Mexico. What's the source of that knowledge?

A. It was through other confidential sources.

* * *

Q. Some source told you he went back to Mexico?

A. Yes.

Id. at 457-59.

Additional evidence showed that petitioner fled to Chicago after the shooting, Vol. XXXVI at 554-55; that blood was found on a pair of boots recovered from petitioner's apartment, *id.* at 599; Vol. XXXV at 516-19; that Gregory's final cell phone calls were to and from a contact identified as "Bub," Vol. XXXVI at 592; and that petitioner used the nickname "Bubba," *id.* at 566.

The jury found petitioner guilty on both counts, and he was sentenced to consecutive prison terms of fifty-three and thirty-two years. C704. Petitioner appealed, arguing only that his statutory right to a speedy trial was violated, and the appellate court affirmed. *People v. Johnson*, 2012 IL App (4th) 090893-U.

In April 2014, petitioner filed a counseled postconviction petition again alleging that his statutory right to a speedy trial was violated and arguing that his trial counsel was ineffective in litigating that claim. C827. The trial court dismissed the petition on June 11, 2014, holding that it raised only "matters of record that were or could have been raised on direct appeal" and that trial

counsel was not ineffective. C842-43. Petitioner then filed two pro se motions for reconsideration: one on July 11, 2014, C855; and one on March 11, 2016, C934. Only the second motion raised claims relating to Officer Yandell's trial testimony. C855-866, 935-39. The trial court denied the motions on May 9, 2016, holding that petitioner had "waived" the "new . . . issues not previously raised in the prior petition" and that leave to file a successive petition had not "been requested or allowed." C944-45.

Petitioner appealed, arguing that the trial court erred in failing to consider the claims raised in his second motion for reconsideration "where the omission of those claims from his original petition was the fault of postconviction counsel, [petitioner] exercised due diligence in bringing the new claims to the court's attention, [and] at least one of [the] claims . . . states the gist of a meritorious claim." A27. The appellate court affirmed, holding that it is "improper . . . to raise new . . . issues in a motion to reconsider" and that there is no right to counsel at the first stage of a postconviction proceeding in a non-capital case. A28, 30, 37. This Court granted leave to appeal.

ARGUMENT

Petitioner argues that the trial court erred in summarily dismissing his postconviction petition at the first stage because (1) he raised a meritorious claim in his second motion for reconsideration of the dismissal (though not in the petition itself), and (2) his retained counsel provided "unreasonable

assistance" in drafting the petition.[3] Pet. Br. 2, 13, 39-40. Both of petitioner's arguments are meritless, as it is well settled that litigants may not raise new claims in motions for reconsideration and that there is no right to counsel at the first stage of a postconviction proceeding. Moreover, the ineffective assistance claims that petitioner faults his counsel for not raising are themselves meritless, so counsel did not err in failing to present them.

I. Litigants May Not Raise New Claims in Motions for Reconsideration.

Contrary to petitioner's contentions, Pet. Br. 23-25, litigants may not raise new claims via motions for reconsideration.[4] *See, e.g.*, *Evanston Ins. Co. v. Riseborough*, 2014 IL 114271, ¶ 36 ("Arguments raised for the first time in a motion for reconsideration . . . are forfeited."); *Am. Chartered Bank v. USMDS, Inc.*, 2013 IL App (3d) 120397, ¶ 13 ("Issues cannot be raised for the first time in the trial court in a motion to reconsider."); *Holzer v. Motorola*

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[3] Petitioner appears to argue in the alternative that these two circumstances amount to error when considered in combination, *see* Pet. Br. 2, 13, 26 (arguing that dismissal was error "where" counsel provided unreasonable assistance "and where" later-filed motion presented gist of meritorious claim), but that argument does not help his case. As explained in Sections I and II, a petitioner never has a right to counsel at the first stage of a non-capital postconviction proceeding (even if he retains counsel), and a petitioner may never raise new claims via a motion for reconsideration (even if his retained counsel erred in failing to present those claims). Accordingly, considering these circumstances in combination does not strengthen petitioner's case.

[4] This principle is so well established that petitioner conceded the point before the appellate court. Pet. Br. 23 (acknowledging concession). Given petitioner's waiver, this Court need not consider his argument at all. *See, e.g.*, *Meyers v. Kissner*, 149 Ill. 2d 1, 8 (1992) ("Issues not raised and argued before the appellate court are treated as waived.").

Lighting, Inc., 295 Ill. App. 3d 963, 978 (1st Dist. 1998) ("[I]t is well-settled that one may not raise a legal theory for the first time in a motion to reconsider."); *see also Weidner v. Midcon Corp.*, 328 Ill. App. 3d 1056, 1061 (5th Dist. 2002) (purpose of motion for reconsideration is to inform court of newly discovered evidence, changes in law, or errors in court's earlier application of law). Put another way, a party cannot "amend" a pleading to include new claims after the pleading has been dismissed. *See, e.g.*, *Tomm's Redemption, Inc. v. Hamer*, 2014 IL App (1st) 131005, ¶¶ 14-15 ("A complaint cannot be amended after final judgment in order to add new claims and theories or to correct other deficiencies."); *Basden v. Finck*, 106 Ill. App. 3d 108, 110 (5th Dist. 1982) ("A motion for leave to amend a pleading is not a proper post-judgment motion.").

Petitioner's suggestion that this Court has never addressed whether this general rule extends to the postconviction context, Pet. Br. 23-25, is incorrect: this Court has held repeatedly that claims not raised in an original (or amended) postconviction petition are waived. *People v. McNeal*, 194 Ill. 2d 135, 147 (2000); *People v. Patterson*, 192 Ill. 2d 93, 146 (2000); *People v. Wright*, 189 Ill. 2d 1, 12 (1999); *People v. Flores*, 153 Ill. 2d 264, 274 (1992). The sole authority on which petitioner relies for his contrary view — *People v. Blair*, 215 Ill. 2d 427 (2005), Pet. Br. 25 — does not support his argument. *Blair* held only that, where a court dismisses a petition sua sponte on grounds of waiver or res judicata, the petitioner may raise "exceptions" to those

doctrines in a motion for reconsideration. *Blair*, 215 Ill. 2d at 451. *Blair* did not hold — or even suggest — that a petitioner could raise new constitutional *claims* in such a motion. And, in any event, the text of the Act itself makes clear that claims not raised in an original (or amended) petition are waived and cannot be raised unless the petitioner obtains leave to file a successive petition. 725 ILCS 5/122-1(f) (cause for filing successive petition); 122-3 (waiver); *see People v. Jones*, 213 Ill. 2d 498, 506 (2004) (noting that successive petitions are "the sole exception to the waiver language of section 122-3"). "[T]he mechanism for . . . assert[ing] waived claims . . . is the successive postconviction petition," *People v. Jones*, 211 Ill. 2d 140, 149 (2004), and a petitioner cannot circumvent the rules governing successive petitions by relabeling a successive petition as a motion for reconsideration.[5]

[5] Petitioner's second motion for reconsideration was also procedurally improper because it was filed more than thirty days after the entry of judgment and because it was the second such motion that petitioner filed. *See* 735 ILCS 5/2-1203(a) ("In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief."); Ill. Sup. Ct. R. 274 ("A party may make only one postjudgment motion directed at a judgment order that is otherwise final."); *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 538 (1984) ("A motion to reconsider a judgment falls within the category of post-judgment motions which must be filed within 30 days after the challenged judgment is entered."); *Sears v. Sears*, 85 Ill. 2d 253, 259 (1981) ("[S]uccessive post-judgment motions are impermissible when the second motion is filed more than 30 days after the judgment or any extension of time allowed for the filing of the post-judgment motion.").

II. There Is No Right to Counsel at the First Stage of a Postconviction Proceeding.

As this Court has repeatedly held, there is no right to counsel at the first stage of a postconviction proceeding.[6] *See, e.g.*, *Blair*, 215 Ill. 2d at 449 ("[T]he Act only grants th[e] right [to counsel] during the second stage."); *People v. Greer*, 212 Ill. 2d 192, 203 (2004) ("[T]he Act does not provide for appointment of counsel [in a non-capital case] unless an indigent defendant's petition survives the first stage of postconviction proceedings."); *see also People v. Ligon*, 239 Ill. 2d 94, 104 (2010) ("An indigent pro se defendant is entitled to the appointment of counsel in a non-death-penalty case only if his petition survives the summary dismissal stage."); *Jones*, 213 Ill. 2d at 504 ("Once a petitioner has survived the summary dismissal stage of section 122-2.1, the circuit court can appoint counsel if the petitioner is indigent."). And because there is no right to counsel at the first stage at all, there is necessarily no right to a particular level of assistance, "reasonable" or otherwise.[7] *See, e.g.*, *McNeal*, 194 Ill. 2d at 142 (explaining that "reasonable" assistance is "the level of assistance guaranteed by the Act").

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[6] Contrary to petitioner's suggestions, Pet. Br. 18-19, the Act does "guarantee a reasonable level of assistance" of counsel at second-stage proceedings. *See, e.g.*, *People v. Greer*, 212 Ill. 2d 192, 204 (2004).

[7] Petitioner's assertion that this Court "has not specifically addressed whether petitioners are entitled to a reasonable level of assistance at the first stage of postconviction proceedings," Pet. Br. 18; *see also* Pet. Br. 19, is misleading: this Court's holdings that there is no right to counsel at the first stage necessarily mean that there is no right to "reasonable" assistance.

Contrary to petitioner's suggestion, *see* Pet. Br. 16-17, 26, this Court did not implicitly overrule this long line of precedent in *People v. Cotto*, 2016 IL 119006. Petitioner relies on a single sentence in *Cotto*:

> This court has also required reasonable assistance from privately retained postconviction counsel at the first and second stage of postconviction proceedings. *See People v. Mitchell*, 189 Ill.2d 312, 358, 245 Ill. Dec. 1, 727 N.E.2d 254 (2000) (reviewing retained counsel's performance under the reasonable assistance standard).

Cotto, 2016 IL 119006, ¶ 32. But this sentence does not suggest that the Act grants a right to first-stage counsel in *all* cases; it merely reflects that this Court has applied the "reasonable assistance" standard at the first stage in a *capital* case because the Act grants a right to counsel at all stages of capital proceedings. *See* 725 ILCS 5/122-2.1(a) (right to counsel at first stage in capital proceedings); *People v. Mitchell*, 189 Ill. 2d 312, 318 (2000) (noting that Mitchell was sentenced to death). Thus, the appellate court properly rejected petitioner's argument based on *Cotto*. A35 (declining to hold that *Cotto* established right to first-stage counsel in "unclear comment" that "relied on distinguishable precedent"); *accord People v. Garcia-Rocha*, 2017 IL App (3d) 140754, ¶ 29 ("[A]ny right to reasonable assistance of counsel that the *Mitchell* petitioner may have had at the first stage of proceedings does not apply to the defendant in the instant case, who had no statutory right to counsel at the first stage of proceedings."), *appeal denied*, 84 N.E.3d 365 (Ill. 2017).

To the extent petitioner suggests that "fundamental fairness," Pet. Br. 22, requires overruling the precedent outlined in this Section, his argument is unpersuasive. Petitioner's contentions that "no standard[s]," Pet. Br. 19-20, 22, 39, govern retained counsel's performance at the first stage and that a petitioner who retains counsel to draft his postconviction petition has no way to ensure that the filed petition includes all the claims he wants to raise, Pet. Br. 22, are incorrect. Existing standards require all attorneys to consult with their clients and provide competent representation, and nothing prevents a petitioner from arranging with his retained counsel to approve the draft petition before it is filed. *See generally* Ill. Rules Prof'l Conduct Rule 1.1, cmt. 5 (competency includes inquiry into and analysis of factual and legal elements of problem); Rule 1.4 (duty to consult with client and explain matters to extent necessary to permit informed decisions); *People v. Kegel*, 392 Ill. App. 3d 538, 541 (2d Dist. 2009) (rejecting argument that postconviction attorneys have "free rein" to provide unreasonable assistance absent statutory right to counsel and noting that all attorneys are governed by Rules of Professional Conduct).

III. Petitioner's Ineffective Assistance Claims Are Meritless.

Petitioner's postconviction counsel did not err in failing to raise the ineffective assistance claims outlined in petitioner's brief because those claims are meritless.

Petitioner first asserts that Yandell "testif[ied]" that Baker, Garcia, Alvarado, and the Sanchezes "were oblivious" to Gregory's informant status; that trial counsel was ineffective for not raising a personal-knowledge objection to this testimony; and that appellate counsel was ineffective in failing to argue that trial counsel was ineffective in this regard. Pet. Br. 35-36 (citing Ill. R. Evid. 602). This argument mischaracterizes Yandell's testimony: Yandell did *not* testify that these drug dealers were unaware of Gregory's informant status; he testified only that *he* was not aware of them learning of it. Vol. XXXV at 453 (Q: "[T]o your knowledge did [Baker, Garcia, Alvarado, or the Sanchezes] ever learn by any means the identity of Gregory Moore?"; A: "No, they did not."); *see, e.g.*, *Lugo v. Sears, Roebuck & Co.*, No. B-10-137, 2011 WL 845932, at *4 (S.D. Tex. Mar. 8, 2011) (distinguishing testimony that event did not occur from testimony that witness had no personal knowledge of event occurring). Petitioner's complaint that Yandell lacked personal knowledge of these dealers' awareness of Gregory's informant status, Pet. Br. 35, is nonsensical: that lack of knowledge is precisely what Yandell testified to. Because Yandell testified only to his own state of mind, his testimony was competent. *See, e.g.*, *People v. Sonier*, 248 P.2d 155, 156 (Cal. Dist. Ct. App. 1952) ("it is always competent for the party to testify to his own state of mind"). Accordingly, petitioner's trial counsel was not ineffective for failing to raise a personal-knowledge objection to this testimony, and petitioner's

appellate counsel was not ineffective in failing to argue that trial counsel was ineffective for that reason.

Petitioner next claims that Yandell's direct-examination testimony that Octaviano Sanchez "fled back to Mexico" before Gregory's murder and his re-cross testimony that he learned of Octaviano's flight from "confidential sources" was hearsay; that trial counsel was ineffective in (1) failing to object to the direct-examination testimony as hearsay and (2) "elicit[ing] further hearsay" on re-cross; and that appellate counsel was ineffective in failing to argue trial counsel's ineffectiveness on these bases.[8] Pet. Br. 36. But these portions of Yandell's testimony were not hearsay because they did not contain any out-of-court statements: Yandell testified about what he "learned" from his "confidential sources," but he did not testify to what — if anything — those sources told him.[9] *See* Ill. R. Evid. 801(c) (defining hearsay as out-of-court statement offered in evidence to prove truth of matter asserted); *People v. Topps*, 293 Ill. App. 3d 39, 44 (1st Dist. 1997) (no hearsay problem where

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[8] Petitioner's claim that his trial counsel was ineffective in failing to object to this aspect of Yandell's direct-examination testimony as hearsay was not raised in his second motion for reconsideration. *See* C935-37.

[9] Although Yandell testified to an out-of-court statement in a later portion of his recross-examination testimony, *see* Vol. XXXV at 459 ("Q. Some source told you [Octaviano] went back to Mexico? A. Yes."), petitioner's argument is based solely on Yandell's earlier testimony that he learned of Octaviano's whereabouts "through other confidential sources," Pet. Br. 36 (quoting this portion of Yandell's testimony and arguing that it was "inadmissible hearsay"). Accordingly, any argument based on the later testimony is forfeited. *See* Ill. S. Ct. R. 341(h)(7) (points not argued in opening brief are forfeited).

officer "did not divulge actual statements" made by out-of-court declarant). That the jury may have inferred from Yandell's testimony that such statements were made is irrelevant. *See, e.g.*, *People v. Gacho*, 122 Ill. 2d 221, 248-49 (1988) (rejecting "indirect hearsay" argument).

Further, Yandell's testimony on recross-examination was not hearsay for the additional reason that petitioner's counsel did not elicit it to prove the truth of the matter asserted (i.e., that Octaviano had in fact fled the country). On the contrary, counsel was attempting to prove the *falsity* of the matter asserted (i.e., that Yandell's information on this point was unreliable and thus that Octaviano was a viable alternative suspect). *See* Vol. XXXVIII at 791-92, 814 (petitioner's counsel, arguing in closing that Octaviano "ha[d] a motive" to kill Gregory and was "still out there" at the time of Gregory's murder); *People v. Ogg*, 161 Cal. Rptr. 3d 584, 593 (Cal. Ct. App. 2013) ("A statement is not hearsay when offered to show the statement is false."); *State v. Shaw*, 847 S.W.2d 768, 777 (Mo. 1993) (en banc) (statement was not offered for truth, and thus was not hearsay, where offering party's case depended on premise that statement was false); *State v. Price*, 46 S.W.3d 785, 807 (Tenn. Crim. App. 2000) (statement offered for impeachment purposes, rather than truth, is not hearsay). Because these portions of Yandell's testimony were not hearsay, petitioner's hearsay-based ineffective assistance arguments fail.[10]

[10] Petitioner's ineffective assistance claim would fail even if the testimony that his counsel elicited on recross-examination was hearsay: because the effect of counsel's questioning was to suggest to the jury that Yandell's information was

Finally, petitioner asserts that Yandell "had no personal knowledge beyond [police] records that [Baker, Garcia, Alvarado, and Norberto Sanchez] were in custody" at the time of Gregory's murder; that trial counsel was ineffective in (1) failing to raise a personal-knowledge objection to Yandell's direct-examination testimony on this point and (2) eliciting on recross examination "that Yandell learned this information from [police] records"; and that appellate counsel was ineffective for failing to argue that trial counsel was ineffective on these bases.[11] Pet. Br. 37-38. Contrary to petitioner's assumption, however, it is far from clear that Yandell lacked personal knowledge that these other dealers were in custody at the time of Gregory's murder. When asked about the source of his knowledge on this point, Yandell responded, in part, that his knowledge came from "individual cases that [he'd] done on these individuals." Vol. XXXV at 457. The most logical reading of that testimony — that Yandell was aware of whether the other dealers were in

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unreliable, counsel's questioning was neither deficient nor prejudicial. *See, e.g.*, *People v. Miszkiewicz*, 236 Ill. App. 3d 411, 426-27 (1st Dist. 1992) (counsel not ineffective for eliciting purported hearsay from officer as part of strategic attempt to impeach him).

[11] Petitioner also asserts in passing that Yandell's testimony about the other drug dealers being in custody "was hearsay," Pet. Br. 37, but he does not argue that counsel was ineffective in failing to raise a hearsay objection, so any argument on that point is forfeited. *See* Ill. S. Ct. R. 341(h)(7). In any event, the testimony petitioner references, Vol. XXXV at 454, 457-58, was not hearsay because it did not contain any out-of-court statements. *See* Ill. R. Evid. 801(c). And although Yandell testified to an out-of-court statement in a later portion of the recross-examination that petitioner does not cite, *see* Vol. XXXV at 459, lines 9-10, that testimony was not hearsay because petitioner's counsel did not offer it for its truth, *see* Ill. R. Evid. 801(c).

custody because he was personally involved in investigating, arresting, and prosecuting them — is supported by the record. *See* Vol. XXXV at 443-44 (Yandell's testimony at third trial regarding arrest of Baker), 444 (Yandell's testimony at third trial regarding Garcia's arrest and fact that Garcia remained in custody), 444-45 (Yandell's testimony at third trial that Gregory "gave information against" and participated in controlled buys involving Alvarado and that Alvarado was not currently in custody); Vol. XXIV at 103 (Yandell's testimony at second trial regarding Norberto's arrest and fact that Norberto's case "may still be pending"); Vol. XVII at 79, 82, 105 (Yandell, testifying at first trial regarding controlled buy involving Norberto and Norberto's arrest and that "[l]ast known" status was that Norberto's case was "still pending"), 106 (Yandell's testimony at first trial regarding Baker's arrest and subsequent interview); 107 (Yandell's testimony at first trial that Garcia was arrested and remained in custody); C159-60 (Yandell's police report detailing Baker's arrest and charging); C164, 167 (Yandell's police reports reflecting his involvement in investigation of Alvarado); C168, 171 (Yandell's police report reflecting his involvement in arrest of Norberto). Given that Yandell's reference to having worked "individual cases" involving these other dealers adequately explained the source of his knowledge, the remainder of his answer — "It's in the Champaign Police Department records" — was likely a response to petitioner's counsel's inquiry about whether Yandell had drafted any "report[s]" reflecting that the other dealers were in custody at the time of

Gregory's murder. Vol. XXXV at 457-58. Because the record suggests that Yandell's testimony was based on his personal knowledge, petitioner's arguments lack merit.[12]

In sum, all of the ineffective assistance claims petitioner faults his counsel for not raising fail because they are based on strained or inaccurate readings of the record or on misunderstandings of hearsay law. Accordingly, petitioner's counsel did not err in declining to raise those claims.

[12] Even if petitioner were correct that counsel "elicited . . . that Yandell learned this information from [police] records," Pet. Br. 38, his ineffective assistance claim would be illogical: pointing out to the jury that Yandell's testimony was based solely on his review of documents that he failed to bring to court, rather than on his personal knowledge, *see* Vol. XXV at 457-58, would have served to undermine Yandell's unfavorable testimony and thus would have been neither deficient nor prejudicial. *See generally Strickland v. Washington*, 466 U.S. 668, 687 (1984) (demonstrating ineffective assistance requires showing both deficient performance and prejudice).

CONCLUSION

This Court should affirm the appellate court's judgment.

May 30, 2018

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is nineteen pages.

/s/ Retha Stotts
Retha Stotts
Assistant Attorney General

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On May 30, 2018, the **Brief of Respondent-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system and email copies were sent to the following:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail 12 copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

/s/ Retha Stotts
Retha Stotts
Assistant Attorney General