2026 IL App (1st) 241659-U
No. 1-24-1659
Order filed November 10, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

SECOND DIVISION

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

v.

ERIC BLACKMAN, Defendant-Appellant.

Appeal from the Circuit Court of Cook County.
Honorable Mary Margaret Brosnahan, Judge, Presiding.
No. 98-CR-30103

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice D.B. Walker and Justice Van Tine concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in its second stage dismissal of defendant's postconviction petition because his claim of ineffective assistance of appellate counsel lacked merit when the State properly commented on the other crimes evidence in rebuttal argument.

¶ 2 Defendant Eric Blackman appeals the trial court's second stage dismissal of his *pro se* postconviction petition and argues he made a substantial showing that his appellate counsel was ineffective. Specifically, he contends his attorney on direct appeal failed to argue that the State improperly used the other crimes evidence to show defendant's propensity to commit the charged offense during rebuttal closing argument.

¶ 3 Defendant was initially found guilty of the October 1998 first degree murder of Lawrence Strong in a bench trial and was sentenced to a term of 45 years. Another panel of this court reversed defendant's conviction and remanded for a new trial. See *People v. Blackman*, 359 Ill. App. 3d 1013 (2005). Defendant was retried before a jury and again convicted of first degree murder. The trial court subsequently sentenced him to a term of 55 years in the Illinois Department of Corrections.

¶ 4 Prior to trial, defendant filed a motion *in limine* to exclude evidence of other crimes. As part of its case, the State intended to show defendant's consciousness of guilt by presenting evidence that a week after Strong's murder, defendant committed two home invasions of potential witnesses and threatened them with a firearm. The trial court denied defendant's motion and found the evidence relevant and admissible as consciousness of guilt.

¶ 5 Before our review of the primary issue on appeal, we recount the evidence presented at defendant's retrial. *People v. Blackman*, 2012 IL App (1st) 103206-U.

> "Around 10 p.m., on October 15, 1998, Wanda Vickers heard loud moans near her home. She went to the window and heard more groans coming from an abandoned car near her home. She saw the flash of a gunshot in the car. She watched a man get out of the car and climb over a fence. Police found Lawrence Strong in the car, dead from a contact gunshot wound to the head. Later that night, Vickers described to police the man she saw leaving the car. She did not name the man. Police also spoke to Jermon Murphy at the scene.
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> A week later, around midnight on October 22, 1998, Blackman and another man kicked in the door of Vickers's home and Blackman asked Vickers, '[W]ho said I did that?' Also on that night, Blackman and the other man kicked in the door

of Murphy's home, and Blackman said to Murphy's mother, Annette McCauley, 'tell him I didn't do it.'

The next day, October 23, 1998, Vickers told police about the home invasion, and she said that she saw Blackman get out of the abandoned car right after she saw the gunshot on October 15. Police arrested Blackman and charged him with murder and home invasion. Blackman pled guilty to charges that he invaded Vickers's home and Murphy's home.

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Courtney Crosby testified that on October 15, 1998, he drank alcohol and smoked marijuana with his friends, Blackman, Murphy and Javon. Blackman showed them he had a gun. Strong drove up and made gang signs to them. Blackman said, 'We ain't folks.' Strong drove over to his girlfriend's home and got out of his car. Blackman and Javon started walking towards Strong before Crosby left the scene.

Murphy testified that he, too, noticed that Strong drove past and Blackman walked towards Strong's car. Murphy saw Blackman push Strong into an abandoned car. Loud moaning preceded a gunshot within the car. Police officers arrived shortly after the shooting. Murphy told one of the officers that Blackman shot Strong, but Murphy did not admit that he saw the shooting. Murphy testified that he did not tell the police what he saw because he feared Blackman. The day after Blackman kicked in the door to his home, Murphy told the police he saw Blackman shoot Strong.

Vickers also testified that she feared Blackman, and that explained her decision not to tell police at first that she saw the gunshot and she saw Blackman get out of the car where police found Strong's corpse. Vickers knew Blackman from the complex where they both lived. She testified that on October 22, 1998, when Blackman kicked in her door, she ran from her bedroom to the door to protect her children. She saw Blackman and the other man waiting for her. Blackman held a gun to her head when he asked, '[W]ho said I did that?' The police put her family in protective custody once she identified Blackman as the shooter. The state paid more than $20,000 for her family's living expenses while they remained in protective custody.

McCauley testified that when Blackman and the other man kicked in the door to her home, Blackman asked where Murphy was. McCauley said he was not at home. Blackman told the other man to guard McCauley, and said, '[I]f she moves, shoot her.' Blackman then went upstairs, to the rooms of McCauley's children. McCauley heard a smack, and she heard one of her children holler. McCauley said to the man guarding her, 'you're going to have to kill me because if he hurt one of my children, I'm going upstairs.' The man went up the stairs and said to Blackman that they should leave. McCauley, briefly unguarded, ran out of the house and slammed the door. She explained that she hoped the two men would chase her and leave her children alone. She hid behind a bush and watched as Blackman and the other man ran past and away from her home.

Blackman testified that he stayed with his girlfriend Laura on October 15, 1998, at her home. He did not remember Laura's last name, but he remembered her

address as 422 East 42d Place. When Blackman heard that Murphy said he killed Strong, he became upset and went to confront Murphy in his home. He kicked in the door when no one responded to his knock. He left when he learned that Murphy was not at home. He went to Vickers's home the same night to confront Vickers's son, and asked why he said Blackman killed Strong when Vickers's son knew that was not true. Blackman said he did not carry a gun to his confrontations with Vickers and McCauley.

In rebuttal, prosecutors presented a fax on a letterhead of the Cook County Assessor's Office, purportedly showing assessment records for 422 East 42d Place. The fax indicated that the land stood vacant from before 1994 through 2008. Blackman's counsel did not object to the exhibit." *Blackman*, 2012 IL App (1st) 103206-U, ¶¶ 4-14.

¶ 6 The jury found defendant guilty of first degree murder. At the sentencing hearing, the trial court considered evidence in aggravation and mitigation, including evidence of defendant's infractions while incarcerated. The court then sentenced defendant to a term of 55 years.

¶ 7 On direct appeal, defendant argued: (1) the trial court erred in admitting the evidence of other crimes; (2) the trial court erred in admitting the fax from the assessor's office without a proper foundation; (3) defendant's sentence was excessive; and (4) his trial counsel was ineffective for failing to object to the admission of the fax. Another panel of this court affirmed defendant's conviction and sentence. *Id*. ¶ 43.

¶ 8 In 2014, defendant filed a *pro se* postconviction petition, alleging multiple claims of ineffective assistance of appellate counsel, including that counsel failed to assert that the

prosecutor improperly argued the home invasion evidence showed defendant's propensity to commit murder. Specifically, defendant complains of the following argument:

> "THE PROSECUTOR: The defense wants you to believe that someone who is capable of committing those two home invasions in the fashion and manner in which those women testified to isn't also capable of first degree murder, capable of—
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> DEFENSE COUNSEL: Objection.
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> THE COURT: Overruled.
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> THE PROSECUTOR: He is incapable of killing a total stranger after he acted in the manner in which he did to those two women, neighbors, mothers of his friends.
>
> Ladies and gentlemen, the evidence has proven that he is exactly capable of that, capable of killing Larry Strong. And the evidence has proved that he in fact did so."

¶ 9 The trial court summarily dismissed the petition as frivolous and patently without merit. On appeal, another panel of this court disagreed and found defendant had set forth the gist of a constitutional claim based on appellate counsel's failure to raise the issue of improper prosecutorial closing argument. *People v. Blackman*, 2016 IL App (1st) 141797-U, ¶ 22. The court reversed and remanded for further proceedings. *Id*. ¶ 24.

¶ 10 On remand, postconviction counsel was appointed to represent defendant. Later, defendant moved to dismiss his attorney and proceed *pro se*, which the trial court allowed. Defendant filed an amended postconviction petition in December 2023, alleging a single claim that appellate

counsel was ineffective for failing to allege prosecutorial misconduct based on the prosecutor's closing arguments on direct appeal.

¶ 11 The State moved to dismiss defendant's amended petition and argued that the claim lacked merit because (1) the challenged comments were made in response to defense counsel's argument; (2) the prosecutor did not use the home invasion to show defendant's propensity to commit murder; and (3) the challenged comments were "so fleeting" that the outcome of defendant's trial would not have been any different.

¶ 12 In a written order, the trial court granted the State's motion and dismissed defendant's petition. Specifically, the court found defendant failed to make a substantial showing of a constitutional violation because the record rebutted his claim and demonstrated that the State's rebuttal argument did not use defendant's "home invasions as proof that his bad character made him capable of committing murder." Instead, "the State's argument constituted proper comment on the credibility of its witnesses and was invited by defense counsel's arguments to the contrary."

¶ 13 The court further found that even if the prosecutor's comments improperly argued propensity, they "were not a material factor in his conviction." Rather, these comments were "brief" and "momentary." The court's limiting instruction to only consider this evidence as consciousness of guilt also mitigated any prejudicial effect.

¶ 14 Defendant argues on appeal his appellate counsel was ineffective for failing to assert that the State improperly argued defendant's propensity to commit the charged murder. In response, the State contends that appellate counsel was not ineffective because no error occurred in the State's rebuttal argument.

¶ 15 The Post-Conviction Act (the Act) provides a three-stage mechanism in which a defendant under criminal sentence in this state can assert that their convictions were the result of a substantial

denial of their rights under the United States Constitution or the Illinois Constitution or both. 725 ILCS 5/122-1(a) (West 2020); *People v. Addison*, 2023 IL 127119, ¶ 18. Postconviction relief is limited to constitutional deprivations that occurred at the original trial. *Id*. at 380. A proceeding brought under the Act is not an appeal of a defendant's underlying judgment, instead it is a collateral attack on the judgment. *People v. Evans*, 186 Ill. 2d 83, 89 (1999).

¶ 16 This case proceeded to the second stage under the Act. At the second stage, the circuit court must determine whether the petition and any accompanying documentation make a substantial showing of a constitutional violation. See *People v. Coleman*, 183 Ill. 2d 366, 381 (1998). If no such showing is made, the petition is dismissed. If a substantial showing of a constitutional violation is set forth, then the petition is advanced to the third stage, where the circuit court conducts an evidentiary hearing. 725 ILCS 5/122-6 (West 2020). When considering a motion to dismiss at the second stage of proceedings, we accept as true all factual allegations that are not positively rebutted by the record. *People v. Johnson*, 2017 IL 120310, ¶ 14. We review a petition dismissed at the second stage *de novo*. *Id*.

¶ 17 To demonstrate a claim of ineffective assistance of counsel, a defendant must establish that: (1) his counsel's performance was deficient, and (2) he suffered prejudice due to counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To demonstrate performance deficiency, a defendant must establish that counsel's performance fell below an objective standard of reasonableness. *People v. Edwards*, 195 Ill. 2d 142, 163 (2001). In evaluating sufficient prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

¶ 18 The *Strickland* standard applies equally to claims of ineffective appellate counsel. *People v. Petrenko*, 237 Ill. 2d 490, 497 (2010). Appellate counsel is not obligated to brief every conceivable issue on appeal. *People v. Pingelton*, 2022 IL 127680, ¶ 64. A defendant cannot establish prejudice based on appellate counsel's failure to argue an issue that lacks merit. *Id.* "If the underlying claim would not have succeeded on direct appeal, then 'there is no arguable legal basis' for defendant's claim of ineffective assistance of appellate counsel, and dismissal is 'proper.' " *People v. Randall*, 2021 IL App (1st) 191194, ¶ 66 (quoting *Petrenko*, 237 Ill. 2d at 501-02).

¶ 19 Here, defendant contends appellate counsel should have asserted that the State's rebuttal argument improperly argued the home invasions were evidence of his propensity to commit murder. According to defendant, "the prosecutor argued that the nature of the home invasions showed [defendant] to be a bad and violent person who, because he was willing to threaten his neighbors and the mothers of his friends with violence, would have no compunction about shooting a stranger." The State maintains no error occurred when the closing arguments are read in their entirety and viewed in context. Rather, the prosecutor was discussing defendant's credibility as a witness as well as the defense's theory of the case.

¶ 20 Generally, a prosecutor is given wide latitude in closing arguments, although his or her comments must be based on the facts in evidence or upon reasonable inferences drawn therefrom. *People v. Page*, 156 Ill. 2d 258, 276 (1993). The prosecutor may properly comment on the evidence presented and any reasonable inferences drawn from that evidence, respond to comments made by defense counsel, and comment on the credibility of witnesses. *People v. McGee*, 2015 IL App (1st) 130367, ¶ 56. Moreover, "closing arguments must be viewed in their entirety, and the challenged remarks must be viewed in context." *People v. Wheeler*, 226 Ill. 2d 92, 122 (2007). "Statements

will not be held improper if they were provoked or invited by the defense counsel's argument." *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). Additionally, it is undisputed that evidence of other crimes is generally inadmissible to demonstrate propensity to commit the charged crime. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003).

¶ 21 When the prosecutor's rebuttal argument is viewed in context, it is clear that counsel did not suggest that the home invasions showed defendant's propensity to commit the murder. Rather, counsel responded to defense counsel's argument and focused on defendant's actions as consciousness of guilt. See *People v. Johnson*, 2021 IL App (1st) 190567, ¶ 16 (Evidence of other crimes may be admissible to show a consciousness of guilt). A defendant's attempt to intimidate a witness, though a separate offense, is permitted for this purpose. *Id*.

¶ 22 Vickers and McCauley both testified that defendant invaded their respective homes and threatened them with a gun. Vickers stated that defendant put a gun to her head and asked, " 'Who said I did that?' " Similarly, McCauley said that defendant put a gun to her forehead and asked about her son Murphy and told her to tell Murphy he " 'didn't do it.' " In contrast, defendant testified that he did not have a gun and he invaded their homes because he was afraid and wanted to clear his name.

¶ 23 During closing arguments, defense counsel argued that Vickers and Murphy had lied and they identified defendant in the murder as retaliation for the home invasions. The attorney stated defendant told the jury that he was "not proud of it and he is not trying to legitimatize" that he went into the homes of McCauley and Vickers. Counsel then argued, "And when he did that, he provoked the retaliation that has brought him before you today." According to counsel, all defendant "was trying to do was to keep them from spreading the kinds of lies that would end him here."

¶ 24 Counsel contended that Vickers did not see defendant shoot Strong because if she had, then she would have told the police when they came to her door. Counsel stated, "if citizen Wanda Vickers knows that Eric Blackman just killed somebody outside her front door, she doesn't wait until later to say so." Counsel further argued, "And when Detective Holmes came to her home, she certainly knew that she could trust him. All this tells you is that she didn't see Eric Blackman out there. When Eric came into her house, Eric then becomes responsible for everything that had happened." Counsel contended that Vickers "was stuck" with her identification of defendant when the State paid to relocate her. Counsel claimed:

> "This idea of fear is just not something that was in Ms. Vickers' mind. She is a citizen like the rest of us. She makes a report and she wants the person caught. That she didn't, that she didn't until she was home invaded, told you everything you need to know."

¶ 25 Turning to Murphy's testimony, counsel said he was "just a liar" and "got caught up in his lies, lies that that young man couldn't even tell his mother." Counsel argued:

> "Ms. McCauley from the witness stand says that when Eric came in and he was yelling I didn't kill that boy, I didn't have anything to do with killing that boy, she had no idea what he was talking about. Jermon Murphy didn't even, couldn't even tell his mother this lie that he was creating."

Counsel asserted that Murphy's decision to go to the police about the shooting was "retaliation" for defendant invading Murphy's mother's home and that Murphy "fabricated the entire thing."

¶ 26 In rebuttal, the prosecutor addressed defense counsel's argument that Vickers and Murphy lied and that defendant broke into their homes because he was desperate to clear his name.

Significantly, the prosecutor also explicitly explained that the evidence of the home invasions was only to be considered as defendant's consciousness of guilt.

> "What the defense wants you to believe is that the defendant was so desperate to clear his name. So what does this innocent, law abiding man do? Grab his friend Laura, his girlfriend for six months to a year, Laura, last name unknown, and bring her to the police or the state's attorney, bring her to Wanda's house, bring her to talk to Jermon. No. What does this law abiding, innocent man do? He kicks in the front door of Wanda Vickers' home and Annette McCauley's home, kicks it off the hinges, kicks it in at gunpoint, kicks it in at midnight. That's what an innocent man does in order to, as he said, get his point across.
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> What was the point he was trying to get across, ladies and gentlemen. Don't talk to the police, don't snitch on me. That was his message.
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> He puts the gun to the heads of the mother of two of his friends, wom[e]n who were his neighbors, wom[e]n who were neighbors to his grandmother. Does he say stop spreading lies as counsel just argued to you? Stop spreading rumors? No. Tell them I didn't do it. Tell the police I didn't do it –
>
> DEFENSE COUNSEL: Objection.
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> THE COURT: Overruled.
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> THE PROSECUTOR: The police are the them in that statement, ladies and gentlemen. Tell them I didn't do it.
>
> The defense wants you to believe that someone who is capable of committing those two home invasions in the fashion and manner in which those women testified to isn't also capable of first degree murder, capable of —

DEFENSE COUNSEL: Objection.

THE COURT: Overruled.

THE PROSECUTOR: He is incapable of killing a total stranger after he acted in the manner in which he did to those two women, neighbors, mothers of his friends.

Ladies and gentlemen, the evidence has proven that he is exactly capable of that, capable of killing Larry Strong. And the evidence has proved that he in fact did so."

¶ 27 The prosecutor then reviewed the evidence presented before arguing that the home invasions were admitted as consciousness of guilt. The prosecutor stated that the home invasions

"were offered, as counsel said, on consciousness of guilt. And what counsel wanted you to believe is that it really wasn't consciousness of guilt but an act of trying to clear your name, clear his name. Are those truly the actions of one trying to clear their name or are those the actions of a man trying to intimidate witnesses. Are they the actions of a guilty conscious? Are they the actions of a guilty man? The answer is yes to those last questions.

The defendant told you that he committed those home invasions because he needed to clear his name. But what do we know from the police? What do we know from cross-examination of these witnesses? Wanda Vickers and Jermon Murphy weren't talking to the police."

¶ 28 After viewing the arguments in context, none of the prosecutor's comments suggested that the evidence of the home invasions showed defendant's propensity to commit murder. The rebuttal argument properly commented on the witnesses' credibility and responded to defense counsel's

contention that the witnesses were liars. The prosecutor argued that defendant's action of invading the homes of Vickers and McCauley was motivated by his consciousness of guilt. The admission of this other crimes evidence for this purpose allowed the inference that defendant committed murder, not because of his propensity for violence, but because he intimidated witnesses due to his guilty conscience. See *Johnson*, 2021 IL App (1st) 190567, ¶ 16 (Other crimes evidence may be admissible to show a consciousness of guilt). The State did not err in arguing that the witnesses feared defendant and identified him after he violently invaded their homes and threatened them with a gun. Further, the prosecutor specifically argued that this evidence showed defendant's consciousness of guilt, the proper purpose for which it was admitted. We find no error in the complained-of comments which were a proper response to defense counsel's closing argument.

¶ 29 Even if the prosecutor's comments were improper, which we do not find, defendant cannot show that these comments impacted his conviction. When considering closing arguments, this court asks whether or not the comments engender substantial prejudice against a defendant such that it is impossible to say whether or not a verdict of guilt resulted from them. *Wheeler*, 226 Ill. 2d at 123.

¶ 30 Here, we cannot say that these comments created such prejudice against defendant as to have impacted the jury's verdict. These comments were a brief statement during a lengthy rebuttal. As discussed above, the prosecutor also argued that the home invasions were only to be considered for consciousness of guilt. This argument ameliorated any possible confusion by the jury about the complained-of comments.

¶ 31 Further, any error was cured when the trial court instructed the jury that it could only consider the other crimes evidence as consciousness of guilt. See *People v. Simms*, 192 Ill. 2d 348, 396-97 (2000) ("The trial court may cure errors by giving the jury proper instructions on the law

to be applied"). The trial court gave the following instruction regarding other crimes evidence.

> "Evidence has been received that the defendant has been involved in offenses other than that charged in the indictment.
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> This evidence has been received on the issue of the defendant's consciousness of guilt and may be considered by you only for that limited purpose.
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> It is for you to determine what weight should be given this evidence on the issue of consciousness of guilt."

¶ 32 Thus, the jury was properly instructed about the limited use of the home invasion evidence, and, as noted above, any error was cured by the court's instruction. Defendant has failed to show any error in the comments caused him substantial prejudice and was not cured by the court's jury instructions.

¶ 33 Because we have concluded that defendant's underlying claim lacks merit, defendant cannot show that he was arguably prejudiced by his counsel's failure to raise these claims on appeal. *People v. Easley*, 192 Ill. 2d 307, 329 (2000) (A defendant is not prejudiced by appellate counsel's failure to raise nonmeritorious issues on appeal.). Accordingly, defendant's claim of ineffective assistance of appellate counsel fails and the trial court properly dismissed defendant's postconviction petition at the second stage.

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

¶ 35 Affirmed.