

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 03 CR 2317301
)	
RON ADAMS,)	
)	The Honorable
Defendant-Appellant.)	Angela Petrone,
)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* Where the defendant failed to include any transcripts of the trial proceedings or any of the trial evidence in the record on appeal, review of defendant's claim that the trial court erred in denying him leave to file a successive postconviction petition was not possible and the trial court's decision was assumed to be legally and factually correct.

¶ 2 Defendant, Ron Adams, appeals from the trial court's denial of his petition for leave to file a successive postconviction petition, which contained, in relevant part, claims of actual innocence and ineffective assistance of counsel. For the reasons that follow, we affirm.

¶ 3

BACKGROUND

¶ 4

We first observe that defendant has failed to include in the record on appeal large portions of the common law record relating to the pre-trial and trial proceedings, any reports of proceedings from the jury trial, and any evidence presented at trial. We will address the effect of this failure on our review of defendant's appeal in the analysis section below. In the meantime, to provide some context for defendant's claims, as the parties do in their briefs, we recite those background facts and trial evidence summarized in this court's decision on defendant's direct appeal.

"The defendant and codefendants Terrance Space and Harvey Space were charged with the murder of Aaron Newman and aggravated battery with a firearm of Martice Chatman. Mr. Newman and Mr. Chatman were shot at a party in the early morning of July 5, 2002. There were approximately 100 persons gathered in the alley behind 3606 West Douglas in Chicago.

The First Day of Trial

On March 1, 2006, the first day of the defendant's trial, the State presented testimony from six witnesses: (1) the deceased's mother, Alice Newman; (2) Laquita "Shay" Thomas; (3) Assistant State's Attorney Tony Garcia; (4) Martice Chatman; (5) first responder officer Liberty; and (6) forensic investigator Kathleen Gahagan.

Ms. Newman testified as the life and death witness.

Ms. Thomas testified that in the early morning of July 5, 2002, she was at a party in the alley behind her house at 3606 West Douglas in Chicago. At 12:15 a.m., Ms. Thomas saw a man wearing a sweatshirt with his hood up enter the alley. Ms. Thomas heard

gunshots and began running. She denied seeing the man in the hooded sweatshirt take his hood off and shoot Aaron Newman. She also denied telling police that the defendant, whom she knew by the nickname 'D-Dot,' was the man in the sweatshirt. Ms. Thomas testified that she was shown a photo array which she signed, but she denied drawing an arrow to the defendant's picture. She denied identifying the defendant in a lineup or naming him as a shooter in a written statement.

Assistant State's Attorney Tony Garcia testified that he interviewed Ms. Thomas regarding the shooting. He prepared a handwritten statement based on the interview, which Ms. Thomas reviewed and signed. In that statement, Ms. Thomas said she saw a man in a sweatshirt with the hood up enter the alley, then heard gunshots and saw the person in the sweatshirt firing a gun at Aaron Newman. Ms. Thomas said the defendant was the shooter, who had taken off his hood. In the statement, Ms. Thomas also said that she identified the defendant in a photo array and at a lineup.

Martice Chatman testified that he also attended the party behind Ms. Thomas's residence. While standing near his cousin, Mr. Chatman turned and saw a man firing a handgun toward him. Because the man wore a sweatshirt with the hood up, Mr. Chatman could not identify him. Mr. Chatman was shot in the shoulder and leg as he ran from the alley.

Officer Liberty testified that he arrived at the alley following a report of shots fired. Officer Liberty learned that there were two gunshot victims and secured the crime scene.

Forensic investigator Kathleen Gahagan, qualified as an expert, testified that she collected bullet casings, bullet fragments, and a shotgun from the alley on July 5, 2002.

Continuation of Trial

When trial resumed, Derrick Smith testified that while he was at the party, at around midnight, he saw codefendant Terrance Space ride a bike into the alley, stop next to victim Aaron Newman, and engage in an ‘unfriendly’ conversation with Mr. Newman before leaving the alley. About 20 minutes later, a man in a sweatshirt with the hood up walked eastbound into the alley. When the man was ‘four to five feet’ away from Mr. Smith, the man removed his hood and pulled a silver handgun from his pocket. Mr. Smith saw the man’s face and identified him as the defendant, Ron Adams, whom he had known for over 10 years. Mr. Smith testified that the defendant was carrying a 9-millimeter Ruger; he denied testifying before the grand jury that the defendant was carrying a 9-millimeter Baretta.

Mr. Smith testified he saw the defendant begin firing his gun, after which Mr. Smith hid behind garbage cans in the alley. From behind the garbage cans, Mr. Smith saw Terrance Space walk northbound into the alley and fire a ‘Tech 9’ gun at Mr. Newman. Mr. Smith also saw Harvey Space walk eastbound into the alley from a vacant lot. Harvey fired a ‘large caliber handgun’ at Mr. Newman. All three shooters then ran from the alley.

Mr. Smith acknowledged that he was a convicted felon and had been arrested three times since July 5, 2002. Mr. Smith testified that he neither received nor expected to receive any favors from prosecutors in exchange for testifying in the defendant’s case.

On cross-examination, Mr. Smith testified that because he was ‘in shock’ after the incident he did not speak to police until July 22, 2002, and did not make a handwritten statement until August 11, 2002. In his first interview with police officers, Mr. Smith did

not say that the defendant removed his hood before he began shooting. Mr. Smith acknowledged that his testimony about being four to five feet away from the defendant when the shooting began differed from his handwritten statement and his grand jury testimony. Mr. Smith also acknowledged that in his handwritten statement he wrote that he ran through a gangway when the shooting began; he did not say he hid behind garbage cans as he testified at trial.

Chicago police sergeant Don Jerome testified that he questioned the defendant on August 8, 2002. The defendant initially said he was not at the party but was robbed and shot in the early morning of July 5, 2002. The defendant said he did not report the incident to police was treated at UIC Hospital. When Sergeant Jerome was unable to confirm that the defendant was treated at UIC Hospital, he questioned the defendant again; the defendant then said he was shot while 'walking to a party.'

Alleged Hearsay Testimony

Detective Ricky Galbreath testified that he interviewed the defendant on August 10, 2002. Over defense counsel's objection, Galbreath testified that the defendant said someone told his family that he was paid to shoot Mr. Newman. The defendant said that his family erected a public memorial for him in an effort to convince their neighbors that he was killed in the shooting.

Forensic Evidence

Forensic scientist Kurt Zeilinski, qualified as an expert, testified that he analyzed the evidence from the scene and confirmed that at least five weapons were used: a '380 automatic, 45 automatic, 9 millimeter [R]uger, [a] 40 Smith and Wesson,' and a shotgun. Although Mr. Newman and Mr. Chatman sustained several gunshot wounds, only a

single bullet was recovered from Mr. Newman's body. Zeilinski testified that the bullet was '380 slash 38 caliber' and matched the 380 automatic casings recovered at the scene.

The Defendant's Case in Chief

Officer Olson testified that on October 1, 2002, he arrested Christopher Saunders and recovered a '.40 caliber Smith and Wesson' handgun from his person. Forensic scientist Beth Patty gave expert testimony indicating that cartridge cases recovered from the scene of the shooting were fired from the recovered handgun. The State objected to defense counsel's question seeking to elicit from Officer Olson that Mr. Saunders was arrested on the same block as the shooting on July 5, 2002. Judge Clay sustained the objection, reasoning that the jury might speculate that the gun remained on the scene for four months. Judge Clay also ruled that the location of Mr. Saunders's arrest was immaterial to the ultimate issue of the defendant's guilt.

Terrell Collier testified that he was driving on the same block where the party took place in the early morning of July 5, 2002. He saw the defendant on the ground, bleeding from apparent gunshot wounds. The defendant was unarmed, dressed in shorts and a T-shirt. Collier testified that he and another man drove the defendant to Bethany Hospital.

Jury Instructions and Verdict

The jury found the defendant guilty of first degree murder and aggravated battery with a firearm. Judge Clay sentenced the defendant to 30 years' imprisonment for first degree murder and a consecutive 15-year term for aggravated battery with a firearm."

¶ 5

On direct appeal, defendant raised the following claims of error:

“(1) the State failed to prove beyond a reasonable doubt that the was accountable for the crimes; (2) the eyewitness identifications presented by the State were unreliable and insufficient to sustain his conviction; (3) Judge Clay erred by failing to declare a mistrial when four jurors’ notebooks were lost at the start of the second day of trial; (4) Judge Clay gave an improper jury instruction on accountability for uncharged accomplices; (5) Judge Clay improperly denied his motion to quash his warrantless arrest because his wife did not consent to the police officers’ entry into their apartment; (6) Judge Clay improperly excluded evidence of the location of the arrest of a man not charged in this case who was in possession of a gun fired at the scene of the crime; and (7) Judge Clay admitted double hearsay at trial.”

¶ 6 On direct appeal, this court affirmed the judgment of the trial court in all respects. Specifically, the court noted that the eyewitness identifications of defendant as a shooter were sufficiently reliable to sustain his conviction, because the claimed credibility issues with Thomas’s and Smith’s testimonies were presented to the jury, and the jury was entitled to credit the portions of the witnesses’ testimonies it saw fit. In addition, the court noted that both witnesses testified that they had a clear view of defendant’s face; both were familiar with defendant (Smith knew defendant for 10 years and Thomas knew defendant’s nickname); defendant was the first to fire a gun, thereby focusing the witnesses’ attention on him; and the witnesses accurately described defendant and confidently identified him for the police. The court also observed that even if the jury concluded that Saunders was involved in the shooting, as defendant argued, “this would not exonerate the defendant where credible testimony was given that he was one of the shooters.”

¶ 7 Thereafter, defendant filed his initial postconviction petition. In it, defendant claimed that he received the ineffective assistance of trial and appellate counsel. Although defendant alleged that his trial and appellate counsel performed deficiently in a number of respects, of relevance here are his claims that trial counsel failed to properly investigate the extent of his injuries and their effect on his physical capabilities; failed to obtain an expert opinion from a medical professional, namely defendant's treating physicians from Bethany Hospital, regarding whether defendant, after being shot, was physically capable of committing the charged offenses; and failed to cross-examine Dr. Faran Bokhari, defendant's treating physician, at trial regarding the extent of defendant's injuries. Defendant argued that because he sustained a broken femur and collapsed lung as a result of his gunshot wounds, he would have been incapable of fleeing the scene of the shooting as described by the eyewitnesses. In his affidavit, defendant averred that he had tried to obtain an affidavit from a medical expert, but that he was unable to do so because he was incarcerated and unable to afford to hire an expert. He also averred that he did not know the name of the doctor who performed the surgery on his leg and, thus, he was unable to locate the doctor's address. He was, however, working on obtaining copies of his medical records.

¶ 8 The trial court summarily dismissed defendant's petition as frivolous and patently without merit. Defendant appealed, contending that the trial court erred in dismissing his petition where he presented an arguable claim of ineffective assistance based on, among other things, trial counsel's failure "to investigate his medical records and to call an expert or Dr. Bokahri to testify to the extent of his injuries, and how they rendered him incapable of running from the scene to contradict Smith's testimony."

¶ 9 This court rejected defendant’s claim that the trial court erred in dismissing his postconviction petition in this respect. The court noted that evidence of the extent of defendant’s injuries was presented to the jury through the testimony of Dr. Bokhari and Sergeant Jerome, who testified that when he arrested defendant on August 8, 2002, defendant was on crutches due to a gunshot wound to his leg, and that any argument that additional witnesses or more extensive cross-examination of Dr. Bokhari would have made a difference was speculative. This was especially true, the court observed, where there was ample evidence that defendant participated in the shooting—namely, Smith’s testimony that he observed defendant, who Smith had known for 10 years, fire his gun in the direction of the victims; Thomas’s statement to Assistant State’s Attorney Garcia that defendant was the shooter and had removed his hood right before the shooting; and Smith’s and Thomas’s lineup identifications of defendant as the shooter. Finally, the court noted that any claim by defendant that his injuries prevented him from fleeing from the scene was positively rebutted by his own statement to Sergeant Jerome that after he was shot, he “ran.” Accordingly, this court affirmed the trial court’s summary dismissal of defendant’s initial postconviction petition.

¶ 10 In May 2017, defendant filed a “Petition for Post-conviction Relief Actual Innocence Claim.” In it, defendant alleges that trial counsel was ineffective for failing to investigate and obtain his medical records, consult with or retain an expert to testify regarding the effects of defendant’s injuries on his ability to flee from the scene, and failing to interview or call a witness who would have “corroborated the exculpatory medical evidence.” Defendant attached a letter from Dr. Samuel Romeo Obiekwe to his petition. In that letter, Dr. Obiekwe stated that he saw and treated defendant on July 5, 2002, at Bethany Hospital. Defendant had sustained multiple gunshot wounds to the “right Thoraco-abdominal, right mid leg, left mid-thigh, and left arm.”

Defendant required a chest tube to drain blood from his chest, and x-rays revealed extensive fractures with displacement and multiple bullet fragments and soft tissue damage of defendant's left leg and severe soft tissue swelling of the right leg. Dr. Obiekwe opined, "Upon clinical reflection it is deemed impossible to run or ambulate or escape from the scene in view of the extensive injury to the left leg with absolute severe bony injury, realizing he had injury to the right leg with extensive soft tissue injury. I think it would be impossible for him to run or escape from the scene without assistance." In addition to the letter from Dr. Obiekwe, defendant attached medical records from Bethany Hospital.

¶ 11 In February 2018, defendant filed a "Motion to Amend Claim of Actual Innocence Post-conviction Petition." In it, defendant raised a claim of actual innocence based on evidence from Derec Bell, a man defendant knew from his neighborhood. Defendant explained that he ran into Bell and during their conversation, he learned that Bell had been at the party where the shooting occurred. Bell agreed to provide defendant with an affidavit regarding what Bell knew of the shooting. In the attached affidavit, Bell stated that he attended the party and observed the following:

"Around midnight, I see two dudes having an argument; I notice it's Jewboy (Aaron Newman) and Yellow (nickname). I know Jewboy and Yellow from around the neighborhood, we run in some of the same circles. The argument was brief, didn't seem serious, Yellow rode-off on his bicycle, and I didn't think nothing of it. 15 to 20 minutes later, I hear someone say 'y'all watch dude, due on something'. I turn to see someone in black pants and a black hoodie, with the hood over his head, tied tight, so you couldn't see his face, staggering towards us as if he was drunk. Jewboy (Aaron Newman) and several other guys pull out their guns. Once I see the guns, I immediately grab my cousin

and we take-off running east through a vacant lot towards Central Park. As we're running, I hear about 8 gunshots, we run south down Central Park to Douglas, where our car was parked. As we're running they're still shooting. I heard at least 20 shots fired by the time we made it to our car. We got in the car and left, I heard later that a couple of people got shot and Jewboy was dead. I didn't see who shot what or who shot who, but I did see multiple people with guns that night including Jewboy."

Defendant argued that this evidence was consistent with the trial evidence that there were multiple shooters and that, despite that fact, the State never "1) attempted to identify any of the other shooters, 2) proved who out of the five, maybe more shooters, actually fired the guns that wounded the victims, 3) or prove that I shared that unidentified person's criminal intent."

¶ 12 Finally, in October 2018, defendant filed a "Supplemental Petition for Claim of Actual Innocence Post-Conviction Petition." In it, defendant contended that his cousin was contacted by Mario Gill, who had witnessed the shooting and wanted to provide information about it. Defendant attached an affidavit from Gill, which stated the following:

"I was attending a party in the park on Douglas and Millard Streets. Around 11:30 to 11:45 pm, Hob (Harvey Space) pulls up, kind of erratic, in his van, parks, gets out, puts his gun in his waistband and walks to the other side of the street. He walks up to G. (Gregory Davis) and Butta (Marvin Keys) whom both are standing in front of the building on the corner of the 3700 block of Millard and Douglas. After a brief conversation G. (Gregory Davis) goes into the building, Hob (Harvey Space) and Butta (Marvin Keys) start walking east on Douglas Street towards Central Park. They stop in front of the 3600 block of Douglas Street, where I can see them talking to someone but I couldn't tell who. I then see G. (Gregory Davis) come back out of the building with like

a maroon hoodie and black pants and walk north down Millard Street. He gets to the alley, he's standing on the side of the church, he peaks [sic] east down the alley, steps back, pulls the hood over his head then went down the alley. I look back down Douglas Street, Hob (Harvey Space) and Butta (Marvin Keys) are still there talking to the person they were talking to but after a few more seconds they went through the vacant lot. About 20-30 seconds after they enter the vacant lot you see crowds of people running from back there, then all of a sudden you hear gun shots. I see G. (Gregory Davis) run out the alley to take cover behind a car on Millard Street in front of Sue's house. I then see like muzzle flashes coming from the playground next to Sue's house and G. (Gregory Davis) fired back in that direction. Hob (Harvey Space) runs out of the alley, and as he's running, he's firing back down the alley, then he takes cover behind a car on the other side of the street. As Hob and G. are engaged in this shootout with whoever's firing back from the playground and ally [sic] a fire truck and a police car are coming down Douglas Street. People are yelling here comes the police, literally as the fire truck turns north up Millard Street. Hob and G. are running south down Millard Street and they make a right on to Douglas Street and run into the building. The fire truck stops at the alley, as the police are pulling in behind it you hear 4-5 more shots and Butta (Marvin Keys) came running out of the ally [sic] right past the police.

The police officers tried to catch him (Butta) but about the time the police made it to Douglas Street, he was in the building.

D. Dot (Ron Adams [defendant]) had nothing to do with the shooting, he was just an innocent bystander who got caught up in Hob's (Harvey Space) and Jewboy's (Aaron Newman) B.S.

D. Dot (Ron Adams) had nothing to do with the shooting, not only was he not involved [*sic*], they shot him to [*sic*], he was a victim as well.”

Gill claimed that he was afraid to come forward earlier because Harvey Space was a “dangerous and powerful man” on the streets. It was only when Gill saw a post online from defendant’s sister that defendant was never coming home that Gill decided that he needed to speak out. Again, defendant argued that this additional evidence was consistent with the trial evidence that at least five weapons were used during the shooting and that there were multiple shooters. Defendant also reiterated his contention that the State failed to prove the identities of the other shooters, who fired the guns that actually wounded Newman and Chatman, and defendant shared the criminal intent of the person who actually shot the victims.

¶ 13 The trial court collectively denied all three of these filings. With respect to defendant’s claim of ineffective assistance of counsel, the trial court concluded that it was barred by *res judicata*, because the claim was raised in defendant’s initial postconviction petition and the summary dismissal of that claim was affirmed on appeal. The trial court also observed that defendant’s argument that his injuries made it impossible for him to run and that such evidence would have changed the outcome of trial was barred by *res judicata*, because it was made at trial, on direct appeal, and in defendant’s initial postconviction petition. The trial court also concluded that defendant’s medical records were cumulative of the evidence regarding his injuries presented at trial and that they were not new because they could have been obtained earlier with due diligence.

¶ 14 As for defendant’s claim of actual innocence based on the evidence from Bell and Gill, the trial court stated that defendant failed to explain why Bell and Gill could not have been

discovered as witnesses earlier through the exercise of due diligence. In addition, even taking Bell's and Gill's statements as true, the trial court concluded that this additional evidence was not so conclusive that it would have probably changed the result on retrial, because Bell did not observe who did the shooting, Gill did not observe everyone who participated in the shooting, there was evidence that at least five guns were used in the shooting, and three of the shooters were identified, with defendant being one of them.

¶ 15 Defendant then instituted this appeal.

¶ 16 ANALYSIS

¶ 17 On appeal, defendant contends that the trial court erred in denying him leave to file his successive postconviction petition containing claims of ineffective assistance of trial counsel and actual innocence. We disagree for the reasons explained below.

¶ 18 Generally, a defendant is permitted to file only one postconviction proceeding. *People v. Edwards*, 2012 IL 111711, ¶ 22. There are two exceptions to this rule. First, section 122-1(f) of the Post-Conviction Hearing Act ("Act") (725 ILCS 5/122-1(f) (West 2016)) permits a defendant to file a successive postconviction where the defendant demonstrates cause for failing to raise the claim in his initial postconviction petition and prejudice to him resulting from that failure. Section 122-1(f) further explains the cause and prejudice requirements:

"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." *Id.*

¶ 19 A defendant may also, with leave of court, bring a successive postconviction petition based on a claim of actual innocence. *People v. Coleman*, 2013 IL 113307, ¶ 83. Relief on claims of actual innocence should be granted only if the defendant presents evidence that is “new, material, noncumulative and, most importantly, of such conclusive character as would probably change the result on retrial.” *Id.* at ¶ 84 (internal quotations omitted). Our supreme court has further explained this standard:

“New means the evidence was discovered after trial and could not have been discovered earlier through the exercise of due diligence. [Citation.] Material means the evidence is relevant and probative of the petitioner’s innocence. [Citation.] Noncumulative means the evidence adds to what the jury heard. [Citation.] And conclusive means the evidence, when considered along with the trial evidence, would probably lead to a different result.”

Id. at ¶ 96. Leave to file a successive postconviction petition based on a claim of actual innocence should be denied only where a review of the proposed successive petition and its supporting documentation makes clear that the defendant cannot, as a matter of law, make out a colorable claim of actual innocence. *Edwards*, 2012 IL 111711, ¶ 24.

¶ 20 The burden to obtain leave to file a successive postconviction petition and to submit sufficient supporting documentation is on the defendant. *Id.* In determining whether the defendant has met this burden, the court must take all well-pleaded facts and supporting affidavits as true. *People v. Edwards*, 2012 IL App (1st) 091651, ¶ 25. Where a defendant makes both a claim of trial error and a claim of actual innocence in a successive postconviction petition, the trial error claim must meet the cause-and-prejudice standard, while the actual innocence claim must meet the new-material-noncumulative-conclusive standard. *Coleman*,

2013 IL 113307, ¶ 91. Our review of the trial court’s denial of the defendant’s motion for leave to file a successive postconviction petition is *de novo*. *People v. Robinson*, 2020 IL 123849, ¶¶ 39-40.

¶ 21 Before addressing the substance of defendant’s arguments, we pause to address a few procedural matters. First, we note that defendant did not file a separate petition for leave to file a successive postconviction petition. Instead, he filed three separate documents (“Petition for Post-conviction Relief Actual Innocence Claim,” “Motion to Amend Claim of Actual Innocence Post-conviction petition,” and “Supplemental Petition for Claim of Actual Innocence Post-conviction Petition”). As the parties do, we construe these documents, collectively, as a petition for leave to file a successive postconviction petition containing the claims identified in the documents. See generally *People v. Tidwell*, 236 Ill. 2d 150, 161 (2010) (“Certainly, no separate motion seeking leave [to file a successive postconviction petition] is mandated by section 122-1(f) [of the Act] in its current form, nor, as we have demonstrated, is an explicit request even required *if* the circuit court sees fit to consider the matter and rule of its own accord. We find that circuit courts have that authority under the statute. *** In light of our holding regarding permissive consideration by the circuit court, we hold further, under the facts of this case, that there is no impediment or obstacle to appellate review of the ruling so rendered.”).

¶ 22 Second, defendant claims that the trial court applied the wrong standard in evaluating his claims, as evidenced by the trial court’s statement in its order that defendant had failed to “meet his burden of making a substantial showing of a deprivation of his constitutional rights.” Instead, defendant argues that he only had to state the “gist” of a constitutional claim. Neither the substantial-showing nor the gist standard applies here, because those are standards applied in the first and second stages of reviewing initial postconviction petitions. See *People v. Reyes*, 369

Ill. App. 3d 1, 13 (2006) (stating that the substantial-showing standard applies to second stage proceedings, and the gist standard applies to first stage proceedings). The standards that apply in resolving a petition for leave to file a successive postconviction petition are stated above. Moreover, because our review is *de novo*, the standard applied by the trial court is irrelevant.

¶ 23 Finally, we note that defendant requests that, should we reverse the trial court’s denial of his petition for leave to file a successive postconviction petition, we remand the matter to a different trial judge. According to defendant, the trial judge who ruled on his petition for leave to file a successive postconviction petition “improperly prejudge[d] matters” and made premature credibility determinations. Because we conclude that the trial court’s judgment must be affirmed for the reasons stated below, we need not decide whether remand to a different trial judge is necessary or appropriate.

¶ 24 We turn now to the primary question of whether defendant should have been granted leave to file his successive postconviction petition, and we address this question in the context of the two postconviction claims raised on appeal—actual innocence and ineffective assistance of trial counsel based on the failure to investigate, consult, and call as a witness a medical expert to testify regarding the effect of defendant’s injuries on his ability to flee from the scene. To the extent that defendant sought leave to raise additional, other claims in his successive postconviction petition, his failure to argue them on appeal results in forfeiture. *People v. Pendleton*, 223 Ill. 2d 458, 476 (2006).

¶ 25 Actual Innocence

¶ 26 Defendant first argues that he should have been permitted to file a successive postconviction petition based on his claim of actual innocence, because the affidavits of Bell and Gill constituted evidence that was new, material, noncumulative, and conclusive, *i.e.*, created a

reasonable probability that, when considered with the evidence presented at trial, the outcome on retrial would be different. This argument fails, however, due to defendant's failure to provide us with a complete record on appeal.

¶ 27 Defendant, as the appellant, bore the responsibility to present a complete record on appeal; accordingly, where doubts arise from the incompleteness of the record on appeal, those doubts will be construed against defendant. *People v. Fernandez*, 344 Ill. App. 3d 152, 160 (2003), citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (“[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.”); see also *People v. Malley*, 103 Ill. App. 3d 534, 536 (1982) (“Where the record on appeal is incomplete, the court will indulge in every reasonable presumption favorable to the judgment or order appealed from. [Citation.] Absent an adequate presentation of the record by the appellant, every reasonable intendment against the defendant is presumed on appeal.”).

¶ 28 In assessing whether new evidence is conclusive, *i.e.*, would have probably changed the outcome on retrial, we are to consider *all* of the evidence together—both the new evidence and the old evidence presented at trial. *Coleman*, 2013 IL 113307, ¶ 97. As previously mentioned, the record on appeal does not contain any transcripts of the trial proceedings or any of the evidence presented at trial. Obviously, without any of the “old” evidence, we are unable to assess whether the new evidence of Bell's and Gill's statements, in conjunction with the evidence presented at trial, would probably yield a different result on retrial. Accordingly, because the incomplete record on appeal precludes us from determining the effect Bell's and

Gill's statements might have had on the outcome of a retrial, we must resolve this doubt against defendant and in favor of the presumption that the trial court's order was correct in concluding that the statements would not probably have changed the result on retrial. See *Fernandez*, 344 Ill. App. 3d at 160; *Malley*, 103 Ill. App. 3d at 536.

¶ 29 We recognize that this court provided a summary of some of the trial evidence in its decision on defendant's direct appeal, and the parties rely on this summary in their briefs on appeal. We have quoted that summary above as part of our statement of facts. Although we do not have reason to doubt the accuracy of that summary, it was drafted in the context of defendant's direct appeal and, thus, was tailored to the issues presented in that appeal. This is apparent from the fact that documents in the record on appeal make clear that the witness testimony summaries in the decision on direct appeal do not reflect the entirety of those witnesses' testimony. For example, in this court's decision on defendant's appeal from the summary dismissal of his initial postconviction petition, there are references to testimony from Jerome that defendant had gunshot wounds at the time of his arrest and evidence that Smith identified defendant in a lineup. Yet, this evidence is not reflected in the summary of trial evidence in this court's decision on defendant's direct appeal.

¶ 30 Moreover, documents contained in the record on appeal in this matter also reference a number of other witnesses who are not mentioned in the direct appeal and whose testimony is not summarized. Specifically, an index page from an excerpt of the trial transcript that is attached to defendant's initial postconviction petition lists as testifying trial witnesses Officer McCray, Officer Matheos, Dr. Bokhari, Julie Wessel, and Farrah Flowers. In addition, the record on appeal, in various places, contains references to trial testimony by Detective James Egan, Officer Rodriguez, Beth Patty, and Officer Olson. In other words, there are at least nine witnesses

whose testimony is not summarized in the direct appeal decision. Accordingly, it is clear that we are missing a large portion of the trial testimony, and we have no ability to assess what, if any, effect that testimony might have on our assessment of the conclusive nature of defendant's new evidence.

¶ 31 In sum, because defendant failed to include any of the trial proceedings or trial evidence in the record on appeal, we are unable to determine whether defendant's new evidence—the statements of Bell and Gill—would have probably changed the result on retrial, an essential component to defendant's claim of actual innocence. Accordingly, we must assume that the trial court's conclusion that the new evidence would not have probably changed the result on retrial was correct.

¶ 32 Ineffective Assistance of Counsel

¶ 33 Defendant also argues that he should have been granted leave to pursue a successive postconviction claim of ineffective assistance of counsel based on his assertion that trial counsel should have consulted and called to testify a medical expert to testify that defendant's injuries would have made it impossible for him to flee from the scene of the shooting. Defendant's claim in this respect is barred by the doctrine of *res judicata*. Claims in a successive postconviction petition that were raised and decided on direct appeal or in an initial postconviction petition are barred by the doctrine of *res judicata*. See *People v. English*, 403 Ill. App. 3d 121, 131 (2010) (where issue was previously raised and litigated in initial postconviction petition, *res judicata* barred it from being litigated a second time in a successive postconviction petition); *People v. Anderson*, 402 Ill. App. 3d 1017, 1029 (2010) (“[G]enerally, postconviction petitions are subject to the doctrine of *res judicata*, so that all issues actually decided on direct appeal or in the original postconviction petition are barred from being relitigated in subsequent petitions.”);

People v. Simmons, 388 Ill. App. 3d 599, 606 (2009) (“Postconviction petitions are subject to the doctrine of *res judicata*, so that all issues raised and decided on direct appeal or in the original postconviction petition are barred from being relitigated in future pleadings or any successive postconviction petitions.”).

¶ 34 Here, defendant raised this precise issue—that trial counsel was ineffective for failing to consult with and call a medical expert to testify that, due to his injuries, defendant was physically incapable of fleeing from the scene of the shooting—in his initial postconviction petition and on appeal from the summary dismissal of that petition. The fact that he has now attached a letter from Dr. Obiekwe to his successive petition does not change our conclusion, because “[a] defendant cannot overcome a *res judicata* bar simply by bolstering a previously rejected claim with additional evidence.” *People v. Woods*, 2020 IL App (1st) 162751, ¶ 67. Accordingly, defendant is barred from raising it again in a successive postconviction petition, and the trial court did not err in denying defendant leave to file a successive petition based on it.

¶ 35 CONCLUSION

¶ 36 For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

¶ 37 Affirmed.