2013 IL App (2d) 111049-U
No. 2-11-1049
Order filed April 4, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ERIC HANSON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 05-CF-3216 Honorable Daniel P. Guerin, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly dismissed defendant's postconviction petition at the first stage as frivolous and patently without merit where the evidence proved defendant guilty beyond a reasonable doubt so that appellate counsel was not ineffective for failing to raise that issue in the direct appeal.

¶ 2 Defendant, Eric Hanson, appeals from an order of the circuit court of Du Page County dismissing his *pro se* postconviction petition at the first stage as frivolous and patently without merit. On appeal, defendant argues that his appellate counsel rendered ineffective assistance of counsel for

failing to raise a reasonable-doubt argument in the direct appeal before our supreme court. We affirm.

¶ 3 BACKGROUND

¶ 4 Following a jury trial in February 2008, defendant was convicted of four counts of first degree murder (720 ILCS 5/9-1(a)(1) (West 2006)), two counts of armed robbery (720 ILCS 5/18-2(a)(1) (West 2006)), two counts of aggravated kidnapping (720ILCS 5/10-2(a)(8) (West 2006)), and two counts of identity theft (720ILCS 5/16G-15(a)(1), (d)(1)(D) (West 2006)). The murder victims were defendant's father, mother, sister Kate, and Kate's husband Jimmy. Defendant was sentenced to death. He appealed directly to our supreme court, which vacated the aggravated kidnapping convictions but affirmed the remaining convictions. *People v. Hanson*, 238 Ill. 2d 74 (2010). On March 9, 2011, Governor Quinn commuted defendant's death sentence to life imprisonment. On March 24, 2011, our supreme court ordered the cause transferred to this court.

¶ 5 On June 22, 2011, defendant filed a petition for postconviction relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2010)). Defendant asserted, *inter alia*, that his appellate counsel was ineffective, and the trial court dismissed the petition in an 18-page written order. This court allowed defendant to file a late of notice of appeal.

¶ 6 Before we summarize the facts of this case, which are extensive, we briefly review the context within which we view those facts. A postconviction proceeding that does not involve the death penalty contains three stages. *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). At the first stage, the trial court must, within 90 days of the petition being filed, independently review the petition, taking the allegations as true, and determine whether the petition is frivolous or is patently without merit. *Hodges*, 234 Ill. 2d at 10; 725 ILCS 5/122-2.1(a)(2) (West 2010). If the court determines that the petition is either frivolous or patently without merit, the court must dismiss the petition in a

written order. *Hodges*, 234 Ill. 2d at 10; 725 ILCS 5/122-2.1(a)(2) (West 2010). If the court does not dismiss the petition at the first stage, then it advances to the second stage, where counsel may be appointed (725 ILCS 5/122-4 (West 2010)), and where the State is allowed to file a motion to dismiss or an answer (*Hodges*, 234 Ill. 2d at 10-11; 725 ILCS 5/122-5 (West 2010)). If the petition makes a substantial showing of a constitutional violation at the second stage, it then is advanced to the third stage, which results in an evidentiary hearing. 725 ILCS 5/122-6 (West 2010). Here, the first-stage dismissal was proper only if the petition has no arguable basis either in law or in fact. *Hodges*, 234 Ill. 2d at 11-12. We review a first-stage dismissal *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388-89 (1998).

¶ 7 In answering the question posed by this appeal, whether appellate counsel was ineffective, we are guided by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail on a claim of ineffective assistance, defendant must show both that counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced him. *Strickland*, 466 U.S. at 687-88. A petition alleging ineffective assistance may not be summarily dismissed if (1) it is arguable that counsel's performance fell below an objective standard of reasonableness and (2) it is arguable that the defendant was prejudiced. *Hodges*, 234 Ill. 2d at 17.

¶ 8 The evidence at trial showed the following. In September 2005, defendant, 28 years of age, lived with his parents, Mary and Terrence (Terry) Hanson in Naperville, Illinois. Defendant slept in a basement bedroom. Defendant was employed as a "loan originator" working 100% on commission. From the start of his employment in April 2005 through September 2005, defendant earned $8,391.03. When his boss, Mike Stoker, asked defendant—the company's lowest

producer—how he lived, defendant replied that he lived with his parents, who were well off, and that was why he liked living there.

¶ 9 Defendant had been engaged to Allison Beck. Although Allison broke off the engagement, she and defendant continued to date. In 2003 and 2004, she noticed that defendant was spending a lot of money. In 2005, Allison asked defendant about his finances, and defendant told her he was "doing very well" at his job. In July 2005, defendant told his sister Jennifer, who lived in Minnesota, that he was working as a mortgage loan officer, was "doing really well at it," and loved it. In July 2005, Jennifer noticed a change in defendant's spending habits. He had a TrailBlazer with "really nice, expensive rims," wore expensive clothes, went to expensive restaurants, said he was going to write his own mortgage for a new condo, and traveled to California more than he ever had. (Allison was living in Los Angeles.) Jennifer discussed defendant's spending with her mother, Mary, and with her sister, Kate.

¶ 10 On July 8, 2004, defendant, without his mother's knowledge, had rented a post office box in Naperville in his and his mother's names. On November 9, 2004, a Capital One Mastercard was issued to Mary Hanson. Defendant was the authorized user. The statements were sent to defendant's post office box. On January 3, 2005, an order was placed from the Hansons' telephone number to Tiger Direct, an electronics store, and was charged to Mary Hanson. On July 7, 2005, two more purchases were made from Tiger Direct, this time via the Internet, and were charged to Mary Hanson care of defendant's post office box. One of the purchases was a Garmin GPS unit. Chase charge cards were opened in Mary Hanson's name. Early statements were sent to defendant's post office box, but statements for September and October 2005 were sent to the Hansons' home address. A Citibank charge account was opened in the name of Mary Hanson in October 2004, and statements

were mailed to defendant's post office box through August 10, 2005. Following that date, statements were sent to the Hansons' home address. Business records reflected that some of the purchases billed to that account were made in Hollywood, California. Defendant was the card user. In January 2005, charges appeared on a Bank of America account in the name of Mary Hanson and were billed to defendant's post office box. Statements for HSBC accounts opened in Mary Hanson's name were billed to defendant's post office box.

¶ 11 On August 14, 2005, Kate called Jennifer and told her that she and Mary discovered that defendant had charged approximately $80,000 worth of merchandise to Mary, his mother. When Kate and Mary confronted defendant, defendant agreed to make restitution. Mary agreed not to tell Terry if defendant paid back the money. However, Kate said she was going to tell Terry. Defendant told Kate: "If you tell dad I'll fucking kill you." Kate was so upset by the threat that she did not go into work the next day.[1]

¶ 12 In late August 2005, Kate called Allison. In response to Kate's call, Allison checked her credit report. In September 2005, defendant, "quite a few times," demanded to know whether Allison had spoken to Kate. Allison lied and said no. Defendant told Allison that if he ever found

[1]Our supreme court held that this hearsay was properly admitted under the doctrine of forfeiture by wrongdoing. *Hanson*, 238 Ill. 2d at 99. The doctrine provides that if a witness is absent by a defendant's own wrongful procurement, he cannot complain if competent evidence is admitted to supply the place of that which he has kept away. *Hanson*, 238 Ill. 2d at 96. In a pretrial motion, the trial court ruled that the State proved that defendant murdered Kate with the intent to make her unavailable as a witness. *Hanson*, 238 Ill. 2d at 95.

out she was speaking to Kate, "she was going to get it." Allison asked what that meant, and defendant said, "Wait and see." Allison asked if that was a threat. Defendant said, "Yes, it's a fact."

¶ 13 Mike Stoker, defendant's boss, testified that in July 2005 defendant's attendance at work was normal, but in August it started to slip, and at the end of August and the beginning of September it became much worse. In the two months leading up to September 28, 2005, defendant "had very little production." Shortly before September 28, 2005, defendant had told Allison and her family exactly what he and his siblings would inherit if their parents died. Allison recalled that when she lived with defendant in the Naperville house for a brief period, defendant would go through Terry's papers. On Monday, September 19, 2005, defendant left Mike Stoker a message that he would not be in to work, that a tragedy had occurred, that his brother-in-law in Minnesota had been killed in a car accident. Defendant called Stoker twice more, once about the "funeral arrangements" and a second time asking to take the whole last week of September 2005 off to be with his sister and help with her children. Defendant never returned to work. When Stoker cleaned out defendant's desk, he found Mary's checkbook.

¶ 14 On September 28, 2005, Jennifer received a call from defendant. Defendant invited Jennifer's husband (who had not died in an accident) to a Vikings game and asked if he could stay at her house. According to Jennifer, this was unusual, because defendant went out of his way to avoid Jennifer and would stay with friends when he was in Minnesota.

¶ 15 At approximately 7 p.m. on the evening of September 28, 2005, defendant took his local girlfriend, Christine Undesser, out for drinks. Defendant drove Christine home, leaving her house at about 10:15 p.m. (The Garmin GPS in his car had been deactivated at 7:30 p.m. It would not be activated again until 9:35 the next morning, September 29.)

¶ 16 At 6:45 p.m. central time on September 28, 2005, defendant spoke to Allison in California and told her he was on his way to the gym. At 9:21 p.m. central time, defendant again spoke to Allison and said he had gone to the gym and to buy paint. At 11:30 p.m. central time, defendant called Allison and said he had a drink with "Jared," was on his way home, and wanted Allison to call him, which she said was unusual, because he did not like her to call the Hanson residence after 10 p.m. At 11:30 p.m. central time, Allison called the Hanson residence and Terry answered, then hung up, and Allison spoke with defendant. According to defendant, after that phone call ended, he watched a DVD and fell asleep around 1:30 a.m.

¶ 17 Allison testified that defendant was a light sleeper. She also testified that when she stayed in defendant's basement bedroom she could hear the garage door, the plumbing in the house, and people walking around upstairs.

¶ 18 At 1:45 a.m. on September 29, 2005, Deborah Chereskin, whose backyard abutted the Hansons' backyard, was awakened by her dog, which was "antsy." At 1:50 a.m., Mrs. Chereskin took her dog outside into the center of her backyard at which time she saw that all of the lights were on in the Hanson home on all three levels, including defendant's basement bedroom. She testified that the "whole house was bright." Mrs. Chereskin had seen the Hanson home in the early morning hours before and had never seen the lights on at that hour. She took her dog back inside and next awoke between 5:30 and 6 a.m. At that time, the only light on in the Hanson home was one above the kitchen window, which, she said, "would be a typical time to see that light on in the house."

¶ 19 Michael Wenzel, another of the Hansons' neighbors, left his home at 4:30 a.m. on September 29, 2005, to go to the airport. He had to drive past the Hanson home. Wenzel testified that there usually were no vehicles parked on the street (evidence established that an ordinance prohibited

parking on residential streets between 2 a.m. and 5 a.m.), but that morning there were three vehicles on the street that he had to "zig-zag" through to get out of the cul-de-sac. One of the vehicles was parked in front of the Hanson house to the west of their driveway. The other vehicles were to the east of the driveway. Wenzel recalled that one of the vehicles was a dark-colored SUV (Mary owned a Black Saturn SUV) and one was a light sedan (Terry drove a silver or gray Chevy Impala).

¶ 20 Nancy Herrera, the Hansons' next-door neighbor, left for work between 5 a.m. and 5:30 a.m. on September 29, 2005. She saw defendant's vehicle parked on the street close to her house. She testified that normally defendant parked in the driveway.

¶ 21 Two of Mary's coworkers became concerned when Mary failed to show up for work on September 29, 2005. They drove to the Hanson home and gained entry through the garage (Jennifer gave them the combination to the keypad). Nothing appeared out of place except for a fire in the fireplace. (Jennifer testified that Mary used the fireplace only at Christmas.) Mary's coworkers left her a note next to a note, written by defendant, that read: "Mom, dad, see you Sunday. Have fun in Galena." Next to the note was some cash. Defendant's postscript indicated that the cash was "payment this month."

¶ 22 On September 29, 2005, at about 7:15 a.m., Jennifer called Terry on his cell phone. He did not answer. Then she called Mary at work but did not reach her. She called Mary's cell phone and then called her sister Kate at work. She was unable to reach Mary or Kate. Jennifer called all of the numbers over and over but there never was any answer.

¶ 23 Bob Stutelberg was Mary's nephew. A coworker of Terry's became concerned when Terry missed a meeting the morning of September 29, 2005, and the coworker called Stutelberg, who also worked at the same company as Terry. Stutelberg went to the Hanson home. Mary's coworkers

were there, and the garage door was open. Mary's Black Saturn SUV was parked in the garage next to defendant's motorcycle. Terry's Impala was not there. Stutelberg went into the house and noticed nothing unusual on the first and second floors except for a "raging" fire in the fireplace, which he said was "beyond odd," because the Hansons almost never had fires, especially not without anyone at home. Stutelberg checked the basement and noted that defendant's bed was made and that "everything was pretty much immaculate." On all the many previous occasions that Stutelberg had seen defendant's bedroom, he said it was "in disorder, to put it nicely." Allison had also testified that defendant's room was messy. Defendant characterized himself as a "slob."

¶ 24 Stutelberg spoke with Jennifer on the phone from the Hanson house. She asked him to go to her sister Kate's house in Aurora, Illinois. When he got there, he saw Terry's Impala in the driveway. There were firefighters on the scene. One of the firefighters told Stutelberg, "It's not pretty in there." Then more police than Stutelberg could count arrived on the scene. A WGN reporter on the scene told Stutelberg that there were four deceased bodies inside the home.

¶ 25 On the morning of September 29, 2005, Chiuchih Tsao, Kate's brother-in-law, thought it unusual that his brother (Kate's husband), Jimmy, did not come to work. Kate worked with them at a trading company, and she did not come to work, either. Tsao went to their home, rang the doorbell, and when no one answered, he peered through a window. He saw a woman on the floor lying in blood. Tsao called his daughter, who arrived at the scene and called 911. The fire department responded first and broke down the front door. Tsao entered the house and saw a "person" "sitting" on the couch. (The "person" was Jimmy's bludgeoned corpse.) Also inside the house were Kate's and Mary's bodies. Terry's corpse was discovered in the garage lying between a Lexus and a Mercedes. Mary and Terry had been shot once in the head. (A second gunshot had

been fired near Terry's head but did not strike him.) Plastic painter tarps were under Mary's and Terry's bodies. Terry's head was wrapped in a terry cloth towel and covered with a plastic bag. (The plastic bag was later determined to have come from the Hanson home.) Mary and Terry were barefoot (Terry's feet were clean) and attired in sleepwear. Kate and Jimmy had been bludgeoned with something like a baseball bat or a metal pipe. Kate and Jimmy were wearing street clothes. Kate's ring finger had been bent backward until it fractured, and it had been pulled as well. A forensic analysis concluded that Jimmy had made his last keystroke on his laptop computer (which had fallen off his lap) at 10:43 p.m. on September 28, 2005. Forensic investigation of the Tsao scene revealed numerous smears of reddish substances on light switches and other surfaces. The absence of ridge detail in fingerprints led the police to conclude that the killer wore gloves. There were two sets of partial shoe prints in blood. While the shoes of persons present at the scene were excluded (such as members of the Tsao family and others who had entered the house without wearing booties), the partial shoe prints were not compared to any other shoes.

¶ 26 Nisha Kalra lived across the street from the Tsao home. Ms. Kalra left her home on September 29, 2005, at about 6 a.m. to take her son to school. At that time, she noticed a sedan parked in the Tsaos' driveway. There were three parking stalls, and the sedan was facing the stall on the left-hand side. When Ms. Kalra returned to her house approximately 15 to 20 minutes later, the sedan was still in the Tsaos' driveway but was then parked facing the farthest right-hand stall. It remained there the rest of the day. (Stutelberg later identified the sedan as belonging to Terry.)

¶ 27 On September 29, 2005, defendant told a friend that he had gone to California the day before, on September 28, the day of the murders. (Defendant also told this friend that he believed the police were going to try to "pin" something on him.) In reality, defendant departed for California on

September 29, 2005. The visit had been arranged prior to the murders. Allison had invited defendant out to Los Angeles to attend a concert. Originally, defendant told Allison that he was leaving home on September 29 at 6:30 a.m. to make a 9:30 a.m. flight. On September 29, defendant called Allison at 10:47 a.m. central time to say that he missed his flight because of traffic. His new arrival time was 1:30 p.m. Pacific time. (Airline records established that defendant booked a flight to Los Angeles at 9:23 a.m. September 29 that departed at 11:15 a.m.) Defendant asked Allison where there was a Nike store, and she said it was 95 degrees and they would be wearing flip-flops. At 1:45 p.m. Pacific time, defendant spoke with Allison, who was at work. Defendant said he was on his way to her house. He also said that he was so tired that he slept the entire flight.

¶ 28 Defendant also spoke with Stutelberg at 10:04 a.m. on the morning of September 29 and told Stutelberg that he was on his way to Midway Airport and asked Stutelberg if he would make his 10:30 a.m. flight to Los Angeles. Stutelberg believed that defendant was in Naperville and said, "Not a chance." Defendant mentioned that he did not get much sleep the night before because of a "rotten" mattress that caused a backache. Stutelberg told defendant that he had been "acting weird lately," and he asked defendant "where [he] was getting all [his] money for all [his] toys." Defendant said that he had been closing a lot of deals. Stutelberg did not believe him. At 10:47 a.m., defendant called Stutelberg again to tell him that he was at his plane's gate eating food from McDonalds.

¶ 29 Between 5:30 p.m. and 6 p.m. central time on September 29, 2005, Stutelberg called defendant, who was in California. Stutelberg told defendant, "I'm hearing there's four deceased bodies in [Kate's] house." Defendant said upon hearing this: "How did people know to go looking over there?" Defendant did not ask Stutelberg who was deceased.

¶ 30 Later that evening in Los Angeles, Allison, having learned from defendant that Mary, Terry, Kate, and Jimmy were dead (defendant heard the news from Aurora Detective Michael Nilles), spoke both to the Naperville police and to the Los Angeles police. Allison then skipped a planned meeting at a Starbucks with defendant. At 9:49 p.m. Pacific time, defendant told Allison in a phone call that he was going to get a hotel and take a nap. However, defendant had checked in at 7:40 p.m. Pacific time for a flight to O'Hare, which he boarded at 10:52 p.m. Pacific time. (This was defendant's third attempt to leave Los Angeles. He did not board the first flight he booked. He did not board the second flight he booked when the ticket agent blurted, "What's going on here? You are the guy.")

¶ 31 Detective Nilles had numerous telephone conversations with defendant on September 29, 2005. (Jennifer had told Nilles about defendant having threatened to kill Kate, and Nilles considered defendant a suspect.) In one of those conversations, Nilles told defendant that two detectives would arrive in Los Angeles around midnight to speak with defendant. Defendant agreed to meet with the detectives at the airport. (Nilles later told defendant that the detectives would arrive at 10:30 the next morning, the first flight they could get, and defendant agreed to that time.) Defendant stated to Nilles that, although he was at the airport, he was not running from the police.

¶ 32 On September 30, 2005, at 7:16 a.m. central time, defendant called Nilles to say that he was still in Los Angeles. The police or the FBI traced defendant's cell phone call while he was speaking with Nilles. Defendant was traveling westbound on I-88 in Illinois toward northbound I-39. (A parking stub in evidence showed that defendant left Midway's economy parking lot that morning at 6:30 a.m. Defendant had told police that his TrailBlazer was parked in the main lot at Midway. When the police searched the main lot, they did not find the TrailBlazer.)

¶ 33 On the morning of September 30, 2005, Wisconsin state trooper Craig Morehouse was on routine traffic patrol covering I-94 eastbound and westbound north of Madison, Wisconsin, as well as I-90 where it runs together with I-94 headed north from Madison. Trooper Morehouse received a dispatch to be on the lookout for a 2005 black Chevy TrailBlazer with Illinois license plates. Morehouse was informed that the driver was defendant, and he was provided a physical description. Morehouse then positioned himself in a U-turn crossover on the north side of Madison where he watched for the subject vehicle, which would be heading westbound. Morehouse left that location and patrolled eastbound on I-90 (which is also southbound I-39). Morehouse observed a black Chevy TrailBlazer headed westbound, and the driver matched defendant's description. He then confirmed the license plate. Morehouse requested assistance, and three other Wisconsin state police units joined him in the pursuit.

¶ 34 When defendant attempted to exit the Interstate, the troopers initiated a traffic stop approximately 30 miles north of the northernmost Janesville, Wisconsin, entrance onto the Interstate. Morehouse arrested defendant, handcuffed him, and placed him in the back of his squad car. Morehouse informed defendant that there was an arrest warrant. (The warrant was for intimidation, relating to defendant's threat against Kate.) Defendant replied that he knew that the police wanted to talk to him but he was unaware of a warrant. The troopers had defendant's vehicle towed to the Columbia County sheriff's department in Portage, Wisconsin. (From there, it was transported to the Aurora police department pursuant to a warrant issued by a Wisconsin court.)

¶ 35 Aurora police officer Reynaldo Rivera examined defendant's TrailBlazer. In the back cargo area were shopping bags full of new men's clothes, purchased that day in Janesville (with one of Mary's credit cards), among other items. There was a "checkbook wallet" on the front passenger

seat containing $747 in currency. In the console, Rivera also found an ID card and a driver's license, both in defendant's name, as well as nine credit cards. One was in Mary's name, and one was in Allison's name. A Ziploc bag was on the front passenger floor. Inside were green vinyl gloves. A brown, flaky substance was on the gloves. Rivera looked into the center console compartment. He found a gold Rolex watch with diamonds (later determined to be Jimmy's). A diamond ring (later determined to be Kate's) was in a tray in the console area. The value of the ring was established at in excess of $23,000.

¶ 36 (After defendant was charged with the murders and was in jail, he wrote to Jennifer, the executor of their parents' estate. In the letter, defendant detailed his knowledge of their parents' assets nearly to the penny, something Jennifer had not known until she became the executor. Defendant also knew the value of all of his sister Kate's personal property, including the value of her purses.)

¶ 37 Forensic testing revealed that Jimmy's DNA was on the Rolex. There was a brown speck on the ring, but forensic testing failed to identify a DNA profile. The stains on the green gloves tested positive for blood. The gloves contained Terry's and Mary's DNA. There was a fingerprint on the Ziploc bag containing the gloves. The fingerprint did not match defendant's. The fingerprint was not compared to either Terry's or Mary's fingerprints. (The Ziploc bag was determined to have come from the Hanson home.)

¶ 38 On September 29, 2005, at 10:30 p.m., the Naperville police entered the Hanson home in Naperville pursuant to a search warrant. Upon entering, Officer Michael Sailer smelled scented candles and burnt wood. There was a 12-candle candlestick on the kitchen table and another candle on the kitchen island. All had burnt wax on them. There were still-warm embers in the fireplace.

Also in the fireplace Sailer discovered a chunk of charred wood, pieces of paper with numbers on them, a chunk of something similar to fabric with a tight weave, and a "globule" of burned plastic. Sailer did a complete walk-through of the entire house and saw nothing else out of the ordinary. The house was tidy and organized. All the beds were made. He specifically noted that there had been no forced entry. In the kitchen, he noted that the coffee pot was filled with water and coffee grounds, ready to be turned on to brew. The next day, Sailer returned to the Hanson house and continued his search. Sailer discovered financial documents consisting of credit cards, credit reports in Mary's name, handwritten notes regarding account balances, and credit card statements stuck between the mattress and box spring in defendant's bedroom. At this time, Sailer was specifically looking for evidence of a bloody crime scene, because the Aurora police were "adamant" that Mary and Terry had not been killed at the Tsao home but had been murdered elsewhere and then transported to the Tsao scene. (For instance, a man's and a woman's coats had been placed over a staircase banister that had blood spatters on it.) But Sailer found no evidence of a crime scene at the Hanson home.

¶ 39 Sailer returned yet again to the Hanson home on October 1, 2005, with officers from Naperville and Aurora. In the northwest yellow bedroom, an officer lifted the mattress off the bed. On the bottom side of the mattress were blood stains. The police then moved to Terry's and Mary's master bedroom where they unmade the bed. They discovered two holes in the wooden headboard. The hole on the north side of the headboard was through-and-through while the hole on the south side of the headboard appeared to be an attempt to drill a through-and-through hole. The through-and-through hole was asymmetrical and did not match the other hole. The through-and-through hole appeared to have been enlarged, perhaps by a drill. There was wood filler in it and scratch marks around it. The back side of the headboard was fiberboard, and the back side of the through-and-

through hole "was all blown out." The second hole appeared to have been made by a drill bit. There were shavings inside the hole. Behind the headboard, directly behind the through-and-through hole, was a hole in the drywall. The hole in the drywall appeared to have been drilled also to alter its appearance.

¶ 40 Further search of the Hanson house revealed gaps on the shelves in a linen closet that led investigators to conclude that linens and bed sheets were missing from the closet. Towels in a bathroom appeared to match the towel that was wrapped around Terry's head. Plastic bags were found under the kitchen sink (later identified as the source of the plastic bag found on Terry's head).

¶ 41 (On October 2, 2005, Jennifer was allowed into the Hanson home to collect clothes for the funerals. While she was in her parents' bedroom, she noticed that the mattress on the bed was the mattress that was usually on the bed in the yellow guest room. She informed the detective accompanying her that the mattresses had been switched. Prior to Jennifer's visit, police concluded from indentations in the carpet that the bed in the master bedroom had been moved.)

¶ 42 Sailer and other officers returned again to the Hanson home on October 2, 2005, to continue their search. They recovered a bullet that had been fired into an attic joist behind Terry's and Mary's bedroom wall. (Evidence showed that the bullet matched bullets in Mary's and Terry's bodies.) In the garage, police found wood filler spackling compound, a sanding block, and paint. The next day, October 3, police found an empty bottle of carpet cleaner in the basement; another open container of carpet cleaner; and paper towels in an open wrapper near the cleaning products. They also found a carpet shampooer and a cordless drill on top of a case. There was a set of drill bits in another case. The 5/16 bit was missing. A further search revealed the key with remote to Mary's Saturn and a house key. A search of Mary's Saturn revealed reddish-brown blood stains on the

fabric and the carpet in the back of the vehicle. (Forensic evidence showed that Terry's DNA was found in the Saturn.)

¶ 43 Detective Nilles testified to driving times under conditions similar to those of the night of September 28, 2005. From Christine Undesser's address to the Tsao home was 10 to 15 minutes. From the Tsao home to the Hanson home was approximately five minutes.

¶ 44 In one of Nilles's telephone conversations with defendant on September 29, Nilles asked defendant whether he had taken his family's credit cards. Defendant denied it. Defendant said that he had taken money four years earlier but that he had worked it out with his family. Angry, defendant accused Kate of sticking her nose into things. Nilles asked defendant if he had ever threatened anyone in his family. After a long delay, defendant denied it. Defendant told Nilles that he ate dinner with Mary at 6:15 p.m. the evening of September 28, 2005. Defendant said that he picked up Christine at 6:45 p.m. and went to the Fox and Hound bar in Aurora, where they stayed until 9:30 p.m. Then they drove to Christine's place. Defendant remained there for about 25 minutes. He then drove to the Hanson home, arriving between 10:15 p.m. and 10:30 p.m. He told his father goodnight and watched a movie in his bedroom until about 12:30 p.m. or 1 a.m. Defendant said he left for the airport at 8:15 the next morning.

¶ 45 At trial, defendant testified that he fraudulently made purchases using credit cards he obtained in his parents' names, beginning in 2004. Defendant admitted that Mary confronted him in August 2005. According to defendant, Kate was not present, but she kept calling on the telephone. Defendant testified that he promised his mother he would work harder and "make it right." Mary agreed not to tell Terry (who defendant said would "flip out") as long as defendant continued to pay restitution. Defendant admitted that he continued to make purchases using

fraudulent credit cards after the confrontation. Defendant denied threatening Kate. (In an 11-page letter he wrote Stutelberg from jail, defendant stated that he had told Kate to stay out of his life or she would regret it. He also wrote that Kate had asked if he was threatening her, and defendant said no, I am promising.)

¶ 46 The State's evidence had shown that defendant deposited large sums of money into his account at TCF Bank. At trial, defendant explained this by saying that Terry, who knew about the credit card fraud, agreed to secure a loan to pay off the debts. Defendant testified that when Terry procrastinated, defendant used Terry's identity to obtain a $48,000 loan in Terry's name. According to defendant, Terry agreed to take out a second loan, but when Terry again procrastinated, defendant again used Terry's identity to get a $13,800 loan. Defendant requested that the $13,800 check be made payable to Mary. Defendant admitted that he forged Mary's endorsement on the check.

¶ 47 Defendant admitted that he made only between $8,000 and $9,000 working as a mortgage broker.

¶ 48 Defendant testified to his activities on the evening of September 28, 2005. He said that he took Christine out to the Fox and Hound. He picked her up around 7:15 p.m. or 7:30 p.m. Defendant did not know how the Garmin GPS unit in his car got deactivated, whether it became unplugged or somehow lost signal. They returned to Christine's house at 10 p.m. or 10:30 p.m. Christine was upset because defendant told her he was going to Los Angeles to visit Allison the next morning. Defendant testified that he got home at about 11 p.m. Terry was in his home office. According to defendant, at about 11:15 p.m., he called Allison, but she did not answer. He placed his cell phone in the charger in his car. Allison called him on the land line in the house. Defendant and Terry answered the phone simultaneously. When defendant finished talking to Allison, he

wished Terry goodnight and went to his bedroom in the basement. He had a cigarette, put a movie in the DVD, and fell asleep with the TV on at approximately 1:30 a.m. He did not hear any noises or gunshots, or anything out of the ordinary, during the night.

¶ 49 Defendant testified that he awoke the next morning, September 29, at around 6:45 or 7. He had a cigarette then went out to buy another pack. He returned home and had showered and packed by 8:15 a.m. Defendant testified that he needed to stop at Kate's house in Aurora on his way to the airport to drop off her diamond ring and Jimmy's Rolex. Defendant explained that Kate had left her ring at the Hanson house when she was painting flower pots. Defendant said that Kate had brought Jimmy's Rolex over to the Hanson house to size a nice time piece for Terry. According to defendant, he put the ring and the Rolex in his car before he showered. (Defendant's DNA was not detected on either item.) Defendant testified that, because he was in a hurry to get to the airport, he forgot to stop at Kate's house to return the jewelry. According to defendant, he also forgot his wallet and driver's license, so he turned around and went home. According to defendant, when he went inside the house for his license, there was no fire in the fireplace. At that time, he realized he would miss his flight, so he booked one leaving at 11:15 a.m. On his way to Midway, he called Stutelberg about where to park at the airport. Defendant testified that when he arrived in Los Angeles, he went to Allison's house and showered. While in the shower, he shaved off all of his body hair, including his pubic hair.

¶ 50 According to defendant, when Stutelberg called him in Los Angeles and told him about four deceased bodies in the Tsao home, defendant said he was "curious" why "they" called Stutelberg and not defendant. Defendant testified that he asked Stutelberg "why are you at Katie's," and asked if there was somebody there with whom defendant could speak.

¶ 51 Defendant denied knowing how the Ziploc bag with the green gloves got into his car. He thought maybe Terry had left it there.

¶ 52 The jury convicted defendant of all counts and sentenced him to death. As stated above, that sentence was commuted by the governor.

¶ 53 ANALYSIS

¶ 54 Defendant contends that, because the evidence was insufficient to convict him beyond a reasonable doubt, this court should reverse outright his convictions for murder, aggravated kidnapping, and armed robbery.[2] However, under *Hodges*, we review whether defendant's postconviction petition stated an arguable basis for ineffective of assistance of counsel. *Hodges*, 234 Ill. 2d at 11-12. We conclude that it did not.

¶ 55 In deciding whether to make a reasonable-doubt argument in the direct appeal, appellate counsel would have been mindful that the trier of fact determines the witnesses' credibility, weighs the evidence, draws inferences, and resolves conflicts in the evidence. *People v. Kirchner*, 2012 IL App (2d) 110255, ¶ 11. Appellate counsel also would have taken into consideration that, in reviewing the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Lastly, counsel would have been aware that the reviewing court will not substitute its judgment for that of the trier of fact. *Kirchner*, 2012 IL App (2d) 110255, ¶ 11.

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[2]At trial, defendant admitted the charge of identity theft. In this appeal, defendant seems not to be aware that our supreme court vacated the aggravated kidnapping convictions. *Hanson*, 238 Ill. 2d at 124.

¶ 56 Lacking the murder weapons, an eyewitness, or a confession, the State's evidence in the present case was largely circumstantial. Circumstantial evidence is the proof of certain facts and circumstances from which the trier of fact can infer other connected facts that usually and reasonably follow from human experience. *In re Gregory G.*, 396 Ill. App. 3d 923, 929 (2009). The sole limitation on the use of circumstantial evidence is that the inferences drawn from the evidence be reasonable. *Gregory G.*, 396 Ill. App. 3d at 929. Circumstantial evidence is sufficient to sustain a conviction if it satisfies proof beyond a reasonable doubt of the elements of the crime charged. *Gregory G.*, 396 Ill. App. 3d at 929. It is not necessary that every link in the chain of circumstances be proved beyond a reasonable doubt, but it is sufficient if all the circumstantial evidence, taken together, satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Gregory G.*, 396 Ill. App. 3d at 929.

¶ 57 Defendant argues that, if defendant planned to commit the murders as of September 26, 2005, when he decided to go to the concert with Allison in Los Angeles, he had only two days to make the plan. Defendant posits that it is "beyond explanation" how an "almost spur of the moment" undertaking could be executed without leaving physical evidence linking him to the crimes. Putting aside the dubious assumption that the plan could not have been formulated in two days' time, the evidence shows that defendant likely began thinking about killing his parents in July or August, and certainly by September 19, when defendant fabricated the bizarre tale of his brother-in-law's death in a traffic accident and then requested to take off work the whole last week of September. Of all the lies to tell, why fantasize a family member's violent death? In July, defendant's work attendance was normal. In August, his attendance slipped, and by the end of August, it was much worse. We know that defendant threatened to kill Kate in August. We also know that shortly before the

murders, defendant's inheritance was on his mind, because he told Allison's family exactly how much he would inherit when his parents died.

¶ 58 Defendant next argues that he could not have driven from the gory scene at the Tsaos' house to his home on the night of September 28 without getting blood from that scene in his car. We do not know what he did before he left the Tsao scene. Jimmy's and Kate's murders occurred around 10:43 p.m. We know defendant was at home at 11:30 p.m., because Allison first spoke to Terry there and then to defendant. The Hanson home was a five-minute drive from the Tsao home. After killing Jimmy and Kate, did he shower and change clothes before driving home? We also do not know what he did before he left for the airport on September 29. Did he wash and detail his car? These are questions that the evidence squarely presented and from which jury could have drawn reasonable inferences. Thus, the absence of trace evidence from the Tsao scene in defendant's car is not inconsistent with defendant's guilt. Moreover, defendant ignores that evidence from both crime scenes was found in his car. A bag obtained from the Hanson kitchen contained bloody gloves with both Mary's and Terry's DNA on them. Jimmy's Rolex and Kate's diamond ring were in the TrailBlazer's console. Significantly, defendant's DNA was not on either item, which tended to show that he had not picked up the jewelry from his house and put it in his car to return it on his way to the airport, as he claimed, unless he wore gloves to do so. Kate's ring contained a reddish stain but no DNA, allowing the inference that it had been wiped clean. The autopsy evidence showed that Kate's ring finger had been bent backwards, pulled, and fractured during the attack. While defendant argues that Detective Nilles viewed a store video of Kate taken shortly before the murders in which she was not wearing the ring, Nilles testified that the video was so fuzzy, he could not tell whether she was wearing the ring.

¶ 59 Similarly, defendant argues that he would have left incriminating evidence of his presence in Mary's Saturn if he were the one to use it to transport his parents' bodies to the Tsao scene. If defendant had cleaned all the blood from the Tsao scene off himself, none would be found in the Saturn. Defendant says there were two unidentified fingerprints in the Saturn. This argument falsely implies that a stranger or strangers unconnected to the Hanson family had access to the vehicle. The fingerprints to which defendant refers were unable to be lifted from the surface they were on for comparison. Thus, this evidence is inconclusive either way. There is no evidence that the prints could not have been left by one or more of the Hansons.

¶ 60 Defendant further emphasizes that no bloody shoes, clothes, or possible murder weapons were found. The evidence showed that someone started a "raging" fire in the Hansons' fireplace that was burning with no one at home. It is highly unusual that someone would start a fire and then leave it. The fire was burning so intensely when Bob Stutelberg was there that a burning log tumbled out of the fireplace. The fire was so intense that the embers were still warm at 10:30 p.m. when investigators entered the house. Amid the embers were a chunk of charred wood, a melted globule of plastic, some papers with numbers written on them, and a piece of fabric. Was the chunk of wood a bat that was used to bludgeon Jimmy and Kate? Was the fabric from bloody clothes? Was the globule bloody gloves or bloody shoes? Defendant apparently needed new Nikes, because he asked Allison where he could buy them in Los Angeles. Were the papers with numbers more of the types of financial information defendant had hidden between his mattress and box spring? The jury would have been justified in drawing these inferences, which are entirely reasonable.

¶ 61 Defendant also maintains that two different sets of shoe prints in blood at the Tsao scene point to unknown assailants. Sergeant Groom of the Aurora police testified that she excluded

everyone at the immediate scene who had entered the house without protective booties, but that she did not compare the prints to any of defendant's shoes. She testified that the prints were partial prints. Contrary to defendant's argument, the fact that there were two sets of shoe prints does not exclude defendant as the killer. He killed Jimmy and Kate at about 10:43 p.m. and was at home by 11:30 p.m. Mary and Terry were shot and killed in their bed and then their bodies were taken to the Tsao scene. A rational trier of fact could infer that defendant wore different shoes on this second visit to the Tsao scene.

¶ 62 Next, defendant argues that his flight from Los Angeles to Wisconsin had an innocent explanation. He argues that he wanted to avoid the unpleasantness of being accused by the police face-to-face. He could have avoided that unpleasantness by returning to Chicago and invoking his rights to remain silent and to counsel. Instead, he lied to the police about where he parked his car at Midway. When defendant knew the police would be expecting him to fly back to Midway, he flew to O'Hare. He lied to Nilles the next morning about still being in Los Angeles when he was on his way to Wisconsin. Moreover, defendant shaved off all of his body hair before he left Los Angeles. Although defendant testified that this was his normal habit, the jury could reasonably have inferred that it was done in an effort to preclude forensic testing if he were caught.

¶ 63 While evidence of flight by itself is not sufficient to establish guilt, it is a circumstance from which a trier of fact can infer consciousness of guilt. *People v. Ingram*, 389 Ill. App. 3d 897, 901 (2009). Whether an inference of guilt may be drawn from evidence of flight depends on the defendant's knowledge that the crime has been committed and that he is or may be a suspect. *People v. Wilcox*, 407 Ill. App. 3d 151, 169 (2010). Here, defendant knew he was a suspect, because Nilles had informed him of the murders and, in six hours of telephone conversations with defendant, had

tried to draw out admissions by telling defendant that he (Nilles) also had a nosy sister, that sometimes people just snap, and by asking defendant who could have killed Kate and Jimmy. Defendant replied, "I did not do this." Defendant further claims that he did not flee when the troopers stopped him in Wisconsin. However, when three Wisconsin state police units were pursuing defendant up I-90, defendant decided to try to exit the highway for some reason.

¶ 64 Lastly, defendant argues that the State's evidence of his motive was speculative. According to defendant, he worked things out with Terry. Defendant says that Terry agreed to get a loan to cover the credit card debt defendant fraudulently incurred. According to defendant, he then himself had to fraudulently obtain the loan, using Terry's identity, because Terry procrastinated. Despite this breach of trust, Terry supposedly agreed to yet another loan, which defendant also had to obtain fraudulently, when Terry once again procrastinated. Any rational trier of fact could find that this testimony was self-serving, incredible, and inconsistent with defendant's own statement that Terry would have "flipped out" if he had been told about the credit card fraud.

¶ 65 Furthermore, the record shows that the motive for the murders was more complex than just the fraud. Defendant was a 28-year-old man with zero ambition to make his own way. He liked living in his parents' basement because they were well off. Defendant coveted fine things. He was obsessed with getting those things through defrauding his parents and inheriting their money. Allison testified that defendant went through Terry's papers in Terry's home office. Defendant kept financial records hidden between his mattress and box spring. Defendant knew—literally almost to the penny—his parents' worth. Defendant told Allison's family how much he would inherit when his parents died. Defendant gave Jennifer an inventory of Kate's personal possessions, including her purses. What man knows how much his sister's purses are worth? With his parents and Kate dead,

defendant would inherit half instead of a third. When we consider defendant's unusual offer to visit Jennifer's home in Minnesota, we see that Jennifer and her family were fortunate that defendant was arrested in Wisconsin on his way north.

¶ 66 Then there was defendant's hatred of Kate. He threatened to kill her in August 2005. When Nilles mentioned Kate to defendant, defendant became angry. Defendant had threatened Allison at his suspicion that Allison had talked to Kate. From jail, defendant wrote a letter to Stutelberg detailing defendant's anger toward Kate. Instead of shooting Kate, as he did his parents, defendant brutally beat Kate with a bat or a pipe. The photos in evidence show a body without a face, that she was bludgeoned beyond recognition.

¶ 67 Defendant argues that his mere presence at the Hanson scene (he denied being at the Tsaos' home) is insufficient proof of guilt. The problem with this argument in the present context is that the mere-presence doctrine is usually associated with an accountability theory. For instance, in *People v. Washington*, 375 Ill. App. 3d 1012 (2007), we acknowledged that our supreme court has made clear that mere presence of a defendant at the scene of a crime, even when joined with flight from the crime or knowledge of its commission, is insufficient to establish accountability. *Washington*, 375 Ill. App. 3d at 1030. See also *People v. Flynn*, 2012 IL App (1st) 103687, ¶ 23 (mere presence of a defendant at the scene of a crime does not render one accountable for the offense.); *People v. Velez*, 388 Ill. App. 3d 493, 512 (2009) (a defendant's mere presence at the scene of the crime is insufficient to prove accountability). The only case defendant cites is *People v. Holtz*, 294 Ill. 143 (1920). In *Holtz*, the evidence of murder was insufficient where the State proved only that a murder was committed, that the defendant was present when her husband was shot, and that a co-defendant was in the house. *Holtz*, 294 Ill. at 155. The defendant was not otherwise connected

to the shooting, and the evidence did not show that the crime could not have been committed by someone else. *Holtz*, 294 Ill. at 155.

¶ 68 Unlike *Holtz*, in our case, for the jury to have found defendant not guilty, the jury would had to have believed:

(1) that the GPS unit in defendant's car deactivated itself, or some unknown person deactivated it, fortuitously on the evening of the murders;

(2) that an unknown person made peaceable entry into the Tsao home and bludgeoned Kate and Jimmy;

(3) that an unknown person made peaceable entry into the Hanson home *while defendant slept* and

(a) shot Mary and Terry in the master bedroom;

(b) turned on all the lights in the house, including in defendant's bedroom;

(c) retrieved plastic tarps from the garage and wrapped Mary's and Terry's bodies in them;

(d) moved the Hanson vehicles and transported the bodies to the Tsao house;

(e) cleaned the Hanson home, including defendant's bedroom;

(f) moved furniture, switched mattresses, and made the beds; and

(g) drilled holes in the parents' headboard and wall;

(4) that an unknown person reentered the Hanson home on September 29 after defendant left and

(a) burned items in the fireplace; and

(b) burned scented candles to disguise the odors of gun powder, blood, and cleaning agents;

(5) that an unknown person put bloody gloves containing Mary's and Terry's DNA in a plastic bag from the Hanson kitchen and then placed the bag in defendant's car;

(6) that someone besides defendant was a common link between the Hanson and Tsao households; and

(7) that an unknown person staged the Tsao scene to make it appear the murders had all occurred there in order to deflect any suspicion from defendant.

¶ 69 In addition to all of the above were the multiple lies defendant told. He lied to a friend in an attempt to create a false alibi, saying he had gone to California on the day of the murders. He lied to Stutelberg about when he was on his way to the airport on September 29 to cover for the real reason that he missed his flight. He lied about still being in Los Angeles on the morning of the September 30, when he was in Illinois traveling toward Wisconsin. We agree with the following statement expressed by our supreme court in *People v. Hart*: "The story defendant told the jury was simply unbelievable. If a defendant chooses to give an explanation for his incriminating situation, he should provide a reasonable story or be judged by its improbabilities." *Hart*, 214 Ill. 2d 490, 520 (2005).

¶ 70 CONCLUSION

¶ 71 Viewing the evidence in the instant case in the light most favorable to the prosecution, as appellate counsel was required to do, the evidence of defendant's guilt is overwhelming. Accordingly, appellate counsel was not ineffective for failing to raise a reasonable-doubt argument,

and the trial court correctly dismissed defendant's postconviction petition as frivolous or patently without merit.

¶ 72 Affirmed.