2017 IL App (4th) 150139-U

NO. 4-15-0139

FILED
June 7, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
GREGORY F. WHITELOW,	)	No. 10CF230
Defendant-Appellant.	)	
	)	Honorable
	)	Timothy J. Steadman,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant failed to establish appointed counsel provided unreasonable assistance when counsel elected not to amend the *pro se* postconviction petition to add claims counsel attempted to advance during the evidentiary hearing.

¶ 2 In May 2012, defendant, Gregory F. Whitelow, filed a *pro* se petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 through 122-7 (West 2012)), alleging his conviction should be overturned because (1) he is innocent; (2) trial counsel refused to call him to testify; and (3) counsel provided ineffective assistance by not filing a motion to quash arrest, object to hearsay testimony, and subject impeaching testimony to adversarial testing. The trial court appointed counsel after an evidentiary hearing. The court denied the postconviction petition.

¶ 3 Defendant appeals, arguing he was denied the reasonable assistance of

postconviction counsel as counsel failed to amend his *pro se* petition to include claims communicated to postconviction counsel and deemed sufficient to be advanced during the evidentiary hearing. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In May 2010, defendant was tried by a jury on charges of attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2010)), aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2010)), and unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)). The following evidence was introduced.

¶ 6 Shannon Foster, the alleged victim, often picked up his friend, Danny Ray, at a nearby apartment complex. To announce his arrival, Foster honked his horn or threw rocks at Ray's second-story window. This behavior upset Ray's downstairs neighbor, Valexis Carmen. Carmen and defendant are cousins. Foster and defendant resided in the same apartment complex, but in different buildings. Foster knew defendant as "G-Money." The previous summer, defendant spoke to Foster about Foster's conduct at Ray's apartment complex.

¶ 7 On January 31, 2010, between 11 a.m. and noon, Foster drove to Ray's apartment complex. Upon arrival, Foster honked his car horn. Ray opened his window and spoke to Foster. Ray then exited the apartment building and entered Foster's car. Foster and Ray drove to Foster's apartment to watch a basketball game. During the game, defendant knocked on Foster's door and asked Foster if he would step outside to talk. Foster exited his apartment with defendant and closed the door. Defendant and Foster stood about five feet apart. Defendant calmly complained about Foster's conduct and how it upset Carmen. He did not threaten Foster. After one minute of conversation, Foster "brushed *** off" defendant and turned to enter his apartment. Defendant

also turned as if he was about to walk away, but then he turned toward Foster and said, "hold up." Defendant reached into his waistband. Foster, knowing defendant carried a gun, rushed through his apartment door. As he entered his apartment, Foster heard a gunshot. Foster's door was still open at that time. Foster did not see defendant with a gun. Foster heard a loud bang and the bullet pass. Foster locked the door and called the police.

¶ 8 When the police arrived, Foster told the officers he knew defendant as "G-Money." Foster reported defendant drove a white Ford Explorer. A bullet was found lodged in the doorframe of the apartment next to Foster's apartment. Foster estimated the bullet struck about 3 1/2 feet above the floor.

¶ 9 Robert Jones, who resided in the same apartment complex as Foster and defendant, testified he was outside his apartment on January 31, 2010, when he heard a boom. Jones went to Foster's apartment to check on him. Foster reported he was fine, but Foster refused to open the door. Jones walked to his vehicle to go to the grocery store. As he was exiting the parking lot, Jones observed a white Ford Explorer leaving at a "faster than normal" speed. Jones noted the first three digits on the license plate: A60. Jones was unable to identify the driver. The State entered evidence showing the license plate number on defendant's white Ford Explorer to be A608195.

¶ 10 Jason Derbort, a Decatur police officer, testified when he arrived at Foster's apartment complex on January 31, 2010, he spoke with Foster. Foster appeared nervous. Foster initially reported only knowing defendant as "G-Money," but Officer Derbort overheard Foster make a phone call and refer to defendant by his full name. Jason Kuchelmeister, a Decatur police detective, testified the positioning of the bullet could be consistent with someone shooting at an

individual standing in the doorway.

¶ 11 The parties stipulated defendant had a prior felony conviction. After the State rested, it noted defense counsel reported defendant would not testify at trial. The State asked the trial court to make an inquiry of defendant regarding his decision not to testify. Defense counsel indicated he took offense to that line of questioning. The trial court made no inquiry.

¶ 12 The only defense witness to testify was Karroll Jelks. According to Jelks, she and defendant were in a romantic relationship. On January 31, 2010, defendant arrived at her house between 9 and 11 a.m. to watch a football game, which he often did on Sundays. Defendant was at Jelks's home at noon. Shortly after defendant's arrival, Jelks left her residence to drop off her daughter, and defendant was there when she left and when she returned. Defendant stayed until that evening.

¶ 13 Jelks further testified defendant owned his own vehicle, but he sometimes drove the white Ford Explorer. The Explorer had been parked in her backyard because it needed repairs. Jelks acknowledged Foster's apartment complex was less than five minutes from her house.

¶ 14 Defendant was convicted on all three counts. At sentencing, in his statement in allocution, defendant averred multiple witnesses who would have aided his defense should have testified at trial:

> "Heather Wyant was subpoenaed to come to trial, and she told me later she didn't have to come to trial. But in her police report, she told the police she seen three Caucasian, white men run from the scene from the ages of between 21 and 24 years old and

> two African-American men between the ages of 21 and 22, medium-build, leave the crime scene in a white four-door truck. She lives next door to the victim, Shannon Foster. Jackie Ward was subpoenaed and told not to come to trial, and she was shown a photo lineup and didn't circle my picture."

Defendant was sentenced to 11 years' imprisonment for attempt (first degree murder), with a 20-year enhancement for discharging a firearm, and a concurrent 5-year prison term for unlawful possession of a weapon. Defendant filed a direct appeal, arguing the State failed to prove him guilty of attempted murder beyond a reasonable doubt. We affirmed. *People v. Whitelow*, 2012 IL App (4th) 100540-U.

¶ 15 In May 2012, defendant filed his postconviction petition. In his petition, defendant asserted the following claims: (1) he is innocent; (2) trial counsel refused to allow him to testify on his own behalf; (3) he was denied the effective assistance of counsel when trial counsel failed to (a) file motions to quash arrest and suppress evidence, (b) object to hearsay testimony, and (c) subject impeaching testimony to meaningful adversarial testing; and (4) the cumulative effect of the errors denied him a fair trial. Defendant emphasized no one testified he had a handgun in his possession, and five unidentified individuals fled the scene. Defendant further alleged Mario Stowe informed defendant he was selling drugs at Fairview Apartments around noon on January 31, 2010. Stowe completed a sale to four individuals who were unhappy with the transaction and demanded their money back. When Stowe refused, one man pointed a gun at him. Stowe threw the money at the man. The man then jumped back and fired the gun. The four men left in a white pickup truck. Stowe traced the path of the bullet to the door frame.

After reading about defendant's conviction in the newspaper, Stowe sent defendant a letter and provided an affidavit.

¶ 16 In July 2012, the trial court appointed Thomas Wheeler to represent defendant. In November 2013, postconviction counsel stated he would not file an amended postconviction petition. Counsel filed a Rule 651(c) (see Ill. S. Ct. R. 651(c) (eff. Feb. 6, 2013)) certificate in December 2013, asserting no amendments to the *pro se* postconviction petition were necessary.

¶ 17 In December 2013, the State moved to dismiss the postconviction petition. After the April 2014 hearing on the State's motion, the trial court denied the motion and advanced the postconviction petition to the third stage. The court asked postconviction counsel if he was "anticipating filing any more amendments to the postconviction petition?" Counsel replied, "I would say if you can give me maybe seven days to do that then the State then can file an answer to that." In May 2014, postconviction counsel, noting he received additional communications from defendant which needed to be considered and addressed, requested additional time to file an amended petition. The court granted the continuance. In July 2014, postconviction counsel stated, "we will not be filing an amended petition and stand on the petition as it is."

¶ 18 In January 2015, the evidentiary hearing was held. Defendant's trial counsel, Jeff Justice, was the first to testify. Justice testified he met with defendant in jail on February 9, 2010. Defendant explained the charges against him and his prior convictions. Defendant stated he served prison terms for "a controlled substance charge" and for a sex crime. He was also a registered sex offender. At this first meeting, Justice explained his fees and the need for a private investigator due to defendant's contention the victim should be investigated. The investigator interviewed defendant extensively about the events of the day, investigated defendant's

explanation, spoke to an alibi witness, and prepared a report.

¶ 19 According to Justice, when the time came to decide whether defendant would testify, Justice told him "he would be crazy to testify." Justice was concerned the jury would learn of the sex case and the fact defendant was a registered sex offender. In addition, Justice informed defendant if he testified, he would contradict Jelks's testimony. Early in the case, defendant told the investigator and Justice, on January 31, 2010, he left his own place around 9 a.m., driving the white vehicle that belonged to Jelks, hoping to watch a football game at a friend's house. However, a friend called defendant and canceled. Defendant reported he then went to Bourbon Barrel and had a drink around 11:45 a.m. or noon. The investigator, hoping to nail down corroborating information, went to Bourbon Barrel and spoke with the bartender who worked that day. The bartender was "pretty sure" he had not served anyone matching defendant's general description. Defendant accepted Justice's advice not to testify.

¶ 20 Justice testified in respect to defendant's claim he failed to file a motion to quash arrest and suppress evidence. According to Justice, defendant complained the police officers found the white car in Jelks's backyard the day he was arrested. Police reports indicated Jelks consented to the police officers entering her property. According to the private investigator's report, Jelks reported, when the police arrived looking for defendant, she stood in the door to her home. After Jelks asked the police officer about her options, the officer responded she could consent to their entry or, while the officers secured the scene, she could wait until the officers obtained a search warrant. At that point, Jelks stepped aside.

¶ 21 Regarding defendant's claim Justice failed to object to Foster's testimony he knew defendant carried a gun in the past, Justice explained the reasons he decided not to object

or attempt to impeach Foster based on a statement to the police. In his initial statement to a patrol officer, Foster did not report he knew defendant carried a gun. During a follow-up interview by a detective, one hour later, Foster made a statement consistent with his testimony. At trial, when the testimony occurred, Justice knew he could impeach Foster with the patrol officer's report, but he decided against it because the State would redirect with the statement made to the detective. He also knew the State would show patrol officers do not take detailed reports. Justice did not want to emphasize defendant routinely carried a gun or that Foster had prior contact with defendant to know him in that way, which bolstered his identification of defendant.

¶ 22 During cross-examination, postconviction counsel asked the following question: "Were there additional witnesses that you and the—or the [defendant] requested that you interview or call?" The State objected as this was beyond the scope of the postconviction petition. The trial court sustained the objection.

¶ 23 Mario Stowe testified on defendant's behalf. Stowe testified the statements he made in his affidavit were true. No one asked him to prepare the affidavit. Stowe decided to prepare it after stumbling across the information in a newspaper. He "figured, like, hey, you know, why [not] do a good thing and, you know, write the paper."

¶ 24 According to Stowe, after hearing the gunshot on January 31, 2010, he took off. Stowe did not see who fired the gun. When asked if he saw the person shoot, Stowe replied, "I seen, I seen the guy, yes, but I didn't see his face."

¶ 25 Stowe explained, after he handed over the product during a drug transaction, he walked off. The individuals who purchased the drugs had a dispute about the weight of the product. Stowe explained it weighed the correct amount and walked away. The man said

something to get Stowe's attention. When Stowe looked back, he saw the man approaching him. Stowe took the money from his pocket and threw it on the ground. Stowe thought the man continued to approach him. Stowe "heard a shot, and [he] just kept running." Stowe testified at no point did he see the man with a gun. He did not see anyone else with a gun. When asked again if he saw the individual with a gun, Stowe replied he did not and stated, "It was dark." Stowe testified he heard one shot. Later, however, when asked about the bullet holes, Stowe testified he heard two or three shots. Stowe did not see defendant or anyone else at the apartment complex. He did not contact the police after the incident for fear of going to jail for selling drugs.

¶ 26 Stowe testified he wrote the information in the affidavit, but "[n]ot all of it." He did not know who typed the affidavit. Stowe had it notarized at a currency exchange. He did not sign his name in the presence of the notary. Stowe denied knowing defendant or defendant's mother, Bernice Whitelow. He denied knowing Bernice lived two doors from him. Stowe further denied listing Bernice as his emergency contact when he was booked for the offense of driving while his license was revoked in 2013.

¶ 27 Defendant testified he hired Justice after his arrest. Justice visited him six times before trial. According to defendant, he always wanted to testify. At the first meeting, the two discussed the issue. They discussed it "like, three times." Defendant never stated he did not want to testify. The two had heated discussions. Justice did not want him to testify because of his background. Defendant wanted to testify because of his innocence. When asked if Justice told him he could not testify, defendant responded Justice "just said he didn't want me to testify." Defendant continued to express his desire to testify throughout the trial. Justice did not call him to testify.

¶ 28 Defendant testified a woman, Heather Ryan (transcripts from the sentencing hearing identify her as Heather Wyant), saw what occurred. According to defendant, in Ryan's police report, which is not part of the record, Ryan reported seeing three white males and a black male, in their early 20s, running. According to defendant, Ryan resided in apartment No. 5 and the shooting took place at apartment No. 7. Defendant told Justice about Ryan and a "Caucasian lady" who resided next to Foster, but Justice refused to call them, stating they could win the case without them.

¶ 29 At this point, the State objected on grounds the questioning was beyond the scope of the postconviction petition. The trial court sustained the objection. The following discussion occurred:

> "[POSTCONVICTION COUNSEL]: The only thing I would mention, Judge, is Ground 1 in throughout, in the body of the document refers to the failure, basically, to pursue identification of these witnesses.
>
> THE COURT: Paragraph one of the petition?
>
> [POSTCONVICTION COUNSEL]: It is Ground—I think it is listed as Ground 1, Judge.
>
> THE COURT: Well, there is no allegation, whatsoever, regarding alleged ineffective assistance for failure to investigate. That is not what it said. It claims actual innocence and the Court understands that. So I think we're confined to the alleged claim. So objection sustained. It's related, obviously, to his claim of actual

innocence.

[POSTCONVICTION COUNSEL]: Exactly.

THE COURT: But as far as failing to investigate as a basis for the postconviction petition, there is no such articulated claim.

[POSTCONVICTION COUNSEL]: I believe our position on that issue, just for the record, Judge, would be that it would be incorporated in the general grounds listed as Ground 1. But I understand the Court's position, and we will abide by that.

THE COURT: Let's make the record clear, here. There is no allegation under what's titled Ground 1. There are numerous paragraphs and subparagraphs. There is no allegation, whatsoever, of ineffective assistance of counsel for failure to investigate and find witnesses. There is mention of five individuals, two black and three white males were observed running away from the scene after a gunshot was heard. These five individuals were never identified by name by witnesses, et cetera. It doesn't say that the—doesn't say that the attorney, trial counsel somehow didn't investigate to find the names of the witnesses. What it says is the entire allegation is incorporated in a claim of actual innocence. So the objection is sustained. I just want to make the record clear on that."

¶ 30 Defendant averred he and Justice discussed the motion to suppress four of the six

times they met. Defendant wanted to file the motion because they arrested him without a search warrant for a crime he did not commit. Only once did Justice respond directly to defendant's request, stating he would not file the motion. Justice did not explain the reason.

¶ 31 Defendant testified Justice failed to impeach witnesses, Foster, Ray, and Jones, with their felony records. The trial court sustained the State's objection as beyond the scope of the postconviction petition.

¶ 32 At the close of direct examination, postconviction counsel asked the following question: "Other than the issues that we've discussed here, today, and that you've brought up in your petition for postconviction relief, okay, is there anything that we have omitted in your testimony today you feel is important to testify to?" After the State objected as beyond the scope, the trial court sustained the objection.

¶ 33 The State called one witness, David Cook, an investigator with the State's Attorney's office. Cook identified personal history information recorded for Stowe when he was booked for an offense on August 19, 2013. Stowe listed Bernice Whitelow, defendant's mother, as his emergency contact. Cook further testified personal history information supplied by defendant when he was booked on November 18, 2014, listed his residence as the same as Bernice's.

¶ 34 In May 2012, the trial court entered its order denying the postconviction petition. The court found Justice credible. Given defendant's two prior convictions and the inconsistencies between Jelks's proposed testimony and defendant's initial report of his whereabouts, the court concluded Justice's advice not to testify was "sound trial strategy." The court, finding defendant could not show he was prejudiced, rejected the claim Justice provided

ineffective assistance of counsel for not filing a motion to suppress. The court concluded the failure to object to testimony defendant was known to carry a firearm was a matter of trial strategy and not objectively deficient. The court found impeachment by omission of Foster would have had little, if any, effect. As to the claim of actual innocence, the trial court concluded Stowe lacked credibility.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 On appeal, defendant contends his postconviction counsel failed to satisfy the mandates of Illinois Supreme Court Rule 651(c) (eff. Feb. 6, 2013) by not amending the *pro se* petition to include all the claims he communicated to counsel. According to defendant, postconviction counsel filed the Rule 651(c) certificate but later asked for time to file an amended petition and yet, months later, elected to stand on the issues raised in the *pro* se petition. Defendant argues postconviction counsel, through consultation with him, was clearly aware of claims not contained in the *pro se* petition, but counsel failed to amend the petition to add those claims—claims postconviction counsel thought sufficient to advance during the postconviction proceeding. Defendant points to counsel's attempts during the evidentiary hearing to elicit testimony regarding witnesses Justice did not interview and individuals Justice failed to cross-examine regarding their criminal history, as well as to the catch-all question of whether defendant had any other claims he wanted to raise.

¶ 38 The Act affords a remedy to individuals who were sentenced and who assert their convictions resulted from a substantial denial of constitutional rights. *People v. Hodges*, 234 Ill. 2d 1, 9, 912 N.E.2d 1204, 1208 (2009). Pursuant to the Act, the process by which a defendant

may obtain relief involves up to three stages. *People v. Pendleton*, 223 Ill. 2d 458, 471-72, 861 N.E.2d 999, 1007. At the first stage, a postconviction petition is filed and the trial court considers whether the claims in the petition are frivolous or patently without merit. *People v. Andrews*, 403 Ill. App. 3d 654, 658-59, 936 N.E.2d 648, 653 (2010). If the petition survives first-stage review, it advances to the second stage, where the trial court may appoint counsel and a *pro se* petition may be amended. *Id.* at 659, 936 N.E.2d at 653. The State may answer the petition or file a motion to dismiss it. 725 ILCS 5/122-5 (West 2014). If the State elects to answer the petition or if the trial court denies a motion to dismiss, the postconviction proceedings advance to the third stage. *Andrews*, 403 Ill. App. 3d at 659, 936 N.E.2d at 653. At this stage, the defendant may submit evidence supporting his or her claims. *Id.*

¶ 39 A defendant under the Act has the right to counsel at the second and third stage of proceedings. *People v. Thomas*, 2013 IL App (2d) 120646, ¶ 6, 992 N.E.2d 143. This right to counsel is wholly statutory, entitling a defendant only to the level of assistance mandated by the Act. *People v. Perkins*, 229 Ill. 2d 34, 42, 890 N.E.2d 398, 402 (2007). The Act expects appointed counsel to provide reasonable assistance and to present the claims of the defendant adequately. *People v. Suarez*, 224 Ill. 2d 37, 42, 862 N.E.2d 977, 979-80 (2007). Illinois Supreme Court Rule 651(c) (eff. Feb. 6, 2013) ensures appointed counsel meets those expectations, requiring appointed counsel to "consult with the petitioner to ascertain his contentions, examine the record of the trial proceedings, and make any amendments to the *pro se* petition necessary for an adequate presentation of the petitioner's complaints." *People v. Nelson*, 2016 IL App (4th) 140168, ¶ 15, 49 N.E.3d 1007. The rule states a certificate filed by appointed counsel may show appointed counsel complied with these requirements. Ill. S. Ct. R. 651(c) (eff.

Feb. 6, 2013). The certificate creates a presumption appointed counsel provided reasonable assistance. *People v. Jones*, 2011 IL App (1st) 092529, ¶ 23, 955 N.E.2d 1200. The presumption, however, is rebuttable. *Id.* If defendant establishes appointed counsel failed to fulfill these requirements, remand is required for further postconviction proceedings, without consideration of whether the underlying claims have merit. *Suarez*, 224 Ill. 2d at 47, 862 N.E.2d at 982.

¶ 40 As defendant acknowledges, postconviction counsel is required to investigate and properly present only the claims made by defendant. *People v. Davis*, 156 Ill. 2d 149, 164, 619 N.E.2d 750, 758 (1993). Petitioners are "not entitled to the advocacy of counsel for purposes of exploration, investigation and formulation of potential claims ***." *Id.* at 163, 619 N.E.2d at 758. Therefore, postconviction counsel is not obligated to search the record for issues defendant did not raise in his *pro se* petition. *People v. Helton*, 321 Ill. App. 3d 420, 424-25, 749 N.E.2d 1007, 1011 (2001).

¶ 41 Defendant argues, however, the circumstances in this case created an obligation for postconviction counsel to amend his petition. Defendant bases his argument on his conclusion postconviction counsel raised the claims at the evidentiary hearing stage because defendant *told* counsel about these claims, and counsel decided not to amend the petition. Defendant points to no evidence in the record to support this conclusion. It is speculative. We note, in satisfying the mandates of Rule 651(c), postconviction counsel must review the record of proceedings. Any conclusion the issues touched on during the evidentiary hearing originated from defendant has no basis in the record.

¶ 42 Moreover, defendant cites no authority supporting his argument postconviction counsel must add claims communicated by a defendant after the *pro se* petition is filed. It is well-

established postconviction counsel is not required to investigate or add new claims. See *Davis*, 156 Ill. 2d at 163-64, 619 N.E.2d at 758. The Third District, in *People v. Bell*, 2014 IL App (3d) 120637, ¶ 14, 16 N.E.3d 910, held postconviction counsel need not amend a *pro se* postconviction petition to include claims a defendant wants to add after the *pro se* petition was filed.

¶ 43 At best, defendant only attempts to distinguish the State's case law, arguing *Bell* is inapplicable. We disagree. In *Bell*, after the defendant filed a *pro se* petition for postconviction relief and counsel was appointed, the defendant filed five additional *pro se* motions to supplement his initial petition. *Id*. ¶ 4. Appointed counsel elected not to amend the original postconviction petition to include any of the supplemental *pro se* filings. *Id*. ¶ 7. Considering only the claims made in the original petition, the trial court granted the State's motion to dismiss. *Id.* On appeal, the defendant argued he was denied reasonable assistance when his appointed counsel failed to consult with him regarding the arguments made in the supplemental filings. *Id*. ¶ 9. Rejecting this argument, the court found appointed counsel was not required to amend the original petition, holding the "[d]efendant's actions in the present case demonstrate why the 'petitioner's claims' contemplated by Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984), must be limited to those in the original *pro se* petition." *Id*. ¶ 14.

¶ 44 Defendant contends, however, *Bell* is distinguishable because the court found the defendant could not proceed on his *pro se* claims made while he was represented by counsel. We agree the court did so, but only after it held the appointed counsel's obligations under Rule 651(c) extended only to claims in the original petition. *Id*. ¶¶ 14-15. The finding upon which defendant relies has no bearing on our holding here.

¶ 45 We further note defendant's reliance on *People v. Kirk*, 2012 IL App (1st) 101606, ¶ 35, 978 N.E.2d 248, is misplaced. In *Kirk*, the court addressed the question of whether appointed counsel provided unreasonable assistance when counsel disavowed the *pro se* petition, leaving the defendant with no representation for his claim, and orally asserted a new claim at the hearing on the State's motion to dismiss. *Id*. Here, the issue is not whether appointed counsel provided reasonable assistance when he effectively abandoned defendant's postconviction claims. Instead, postconviction counsel not only preserved defendant's claims, but he presented evidence and argued those claims.

¶ 46 III. CONCLUSION

¶ 47 We affirm the trial court's judgment.

¶ 48 Affirmed.