2016 IL App (2d) 131124-U
No. 2-13-1124
Order filed August 3,2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 98-CF-1488
RAUL C. CEJA,	)	Honorable Kathryn E. Creswell,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Assuming *arguendo* the trial court erred in denying defendant's request for discovery of palm-print evidence so that the materials could be reviewed and analyzed by an independent defense expert, the second-stage dismissal of defendant's second-amended post-conviction petition would be affirmed in light of the overwhelming evidence of defendant's guilt.

¶ 2 I. INTRODUCTION

¶ 3 Defendant, Raul C. Ceja, appeals from the trial court's second-stage dismissal of his petition for relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2012)). On appeal, defendant challenges the trial court's denial of his discovery motion,

which requested access to palm-print evidence introduced by the State at his trial so that the materials could be reviewed and analyzed by an independent defense expert. According to defendant, he demonstrated good cause for the discovery request, particularly where he alleged in his post-conviction petition that trial counsel was ineffective for failing to obtain an independent analysis of the palm-print evidence. However, given the overwhelming evidence of defendant's guilt, we conclude that an opinion that the testimony of the State's palm-print expert was flawed, or even an opinion that the palm print at issue did not match the standard obtained from defendant, would not have altered the outcome of this case. Accordingly, we affirm.

¶ 4 II. BACKGROUND

¶ 5 The parties are familiar with the facts of the case. The facts are also set forth in detail in the supreme court's decision from defendant's direct appeal. See *People v. Ceja*, 204 Ill. 2d 332 (2003). Nevertheless, to place our decision in context, we provide the following summary of the evidence presented at defendant's jury trial and the post-conviction proceedings.

¶ 6 In August 1998, defendant was charged by indictment with first degree murder, unlawful possession of a stolen motor vehicle, and unlawful possession of a converted motor vehicle. The charges stemmed from the July 24, 2008, theft of a Chevrolet Tahoe from an automobile dealership, and the July 26, 2008, fatal shooting of Alfredo Garcia and Richard Sanchez by the three occupants of the stolen Tahoe. At defendant's trial, the State theorized that the shooting of Garcia and Sanchez was an act of gang retaliation. Although the evidence did not establish which particular occupant of the Tahoe shot which particular victim, the State argued that defendant was criminally accountable for the murders.

¶ 7 A. Defendant's Trial

¶ 8 The evidence presented at defendant's trial established that on the morning of July 24, 1998, two Hispanic males drove a dark-red Chevrolet Tahoe off the lot of an automobile dealership. A witness identified defendant as the driver of the Tahoe. The men were not authorized to take the Tahoe from the dealership. Later that day, a drive-by shooting occurred outside of defendant's home in Melrose Park. The responding officer observed a bullet hole in the front of the residence. Although defendant was not home at the time of the shooting, defendant's mother and several other individuals were present.

¶ 9 On the evening of July 26, 1998, Garcia and Sanchez were in a red Lincoln traveling westbound on Grand Avenue in Elmhurst. At the intersection of Grand and Oak Lawn Avenues, the men stopped at a red traffic light. As the traffic signal turned green, a maroon Chevrolet Tahoe pulled up to the left side of the Lincoln. The Tahoe had three occupants—a driver, a front seat passenger, and a rear seat passenger. The passengers of the Tahoe shot at the occupants of the Lincoln. The Tahoe then made a U-turn onto the eastbound side of Grand Avenue and again stopped alongside the Lincoln. The driver of the Tahoe shot at the Lincoln. The Tahoe then sped east on Grand Avenue. The occupants of the Lincoln died of gunshot wounds. Eyewitnesses to the shooting described the driver of the Tahoe and the Tahoe's front passenger as two Hispanic males wearing hooded sweatshirts, with the driver being heavyset. The eyewitnesses did not observe the face of the passenger sitting in the rear seat of the Tahoe.

¶ 10 Shortly after hearing a radio dispatch about the shooting, a police officer spotted the Tahoe and a high-speed chase ensued. Eventually, the Tahoe came to a stop in an alley behind some homes. Three individuals exited the Tahoe and ran in different directions. Police from several nearby communities established a perimeter around the area and conducted a canine search. At approximately 9:45 p.m., 10 minutes after the suspects were observed fleeing the

Tahoe, a dog barked at a large bush. Defendant and another man, Rene Soto, were found hiding in the bush. Both men were sweating and breathing heavily. The State presented evidence that defendant and Soto were affiliated with the Maywood Latin Kings street gang and that Sanchez was affiliated with a rival street gang, the Franklin Park Imperial Gangsters. Defendant knew that Sanchez was a member of the Franklin Park Imperial Gangsters and that Sanchez's gang nickname was "Boxer."

¶ 11 At the scene of defendant's arrest, one of the officers asked defendant a series of questions about the shooting. During this questioning, defendant stated that only one gun had been involved in the shooting and that it had been dropped in a yard. Officers canvassed the area and recovered two hooded sweatshirts near the abandoned Tahoe and the bush where defendant and Soto were hiding. Officers also recovered two weapons in the same area: a Smith & Wesson nine-millimeter handgun and a Ruger nine-millimeter handgun. According to testimony presented at the trial, the handguns belonged to the Maywood Latin Kings and would be concealed in bushes or other areas on the gang's turf so that members could access them. Two days prior to the murders, Soto asked another gang member for the guns and then walked off in the direction of some bushes where the guns had been hidden.

¶ 12 While defendant was being driven to the police station, he initiated a conversation with the officer transporting him. Defendant asked the officer "if the people were all right." Defendant also joked that the transporting officer, who was then a patrol officer, would "be a detective by the time [defendant] get[s] out." At the police station, defendant and Soto were placed in separate cells. Law enforcement personnel overheard defendant and Soto having a conversation. Soto told defendant that the police had showed him one of the guns. In Spanish, defendant then said, "[h]ey, they can hear what we are saying." Soto responded in English, "hey,

we are innocent." Subsequently, both men laughed. Shortly later, one of the men was heard saying, "that guy shot up our town." The other man responded in Spanish, "[w]e found them." Both men then laughed. Defendant later related to Soto that his parents were "sending [his] brother away" because "they think they will come after him." Defendant continued, "I hope the brothers don't get popped" because "[t]hey don't have guns anymore." Defendant also said that one of the victims, which he described as "the fat one," was his sister's boyfriend, "Boxer," and that Boxer "wasn't even banging." During an interview at the police station, defendant denied having been in the Tahoe that evening or being involved in the shooting. Instead, defendant claimed to have been at a restaurant until 15 minutes before his arrest.

¶ 13 The evidence further established that the right-rear passenger window of the Tahoe was broken and that glass debris was found at the scene of the shooting and on defendant's shoes. Forensic scientist Alfred Luckas compared samples of glass fragments from the Tahoe's broken window with the glass debris found at the scene of the shooting and on defendant's shoes. After consulting an Illinois State Police Crime Laboratory database of glass samples, Luckas concluded that there was a "good probability of common origin" between the glass taken from the Tahoe window and the glass debris found at the scene of the shooting and on defendant's shoes. Ballistics evidence showed that one spent cartridge found inside the Tahoe had been fired from the Ruger and a second spent cartridge found in the Tahoe had been fired from the Smith & Wesson. Bullets recovered from the Lincoln had also been fired from the two handguns. One bullet was recovered from each of the victims' bodies. Both of those bullets were fired from the Smith & Wesson.

¶ 14 Soto's fingerprint was found on an empty box of bullets recovered from the Tahoe. Soto's fingerprints were also found at several places on the outside of the Tahoe. A partial palm

print was found on the magazine inside the Ruger. Raymond Wojcik, a latent fingerprint examiner, compared the palm print found on the magazine with a standard obtained from defendant. Wojcik first noted that the palm print found on the magazine was the same general shape as the known standard. He then examined the ridge events. He considered two prints to match if they contain at least nine points of similarity. Wojcik charted 15 points of similarity between the print on the magazine from the Ruger and the standard obtained from defendant. Wojcik therefore concluded that the palm print found on the magazine from the Ruger matched defendant's left palm. Wojcik noted that his interpretation of the palm-print evidence was verified by a co-worker. On cross-examination, Wojcik acknowledged that there was no way to determine the age of a print.

¶ 15 During closing argument, defendant's trial attorney attacked several aspects of the State's case, including Wojcik's opinion that defendant's palm print matched the palm print found on the magazine from the Ruger. Counsel acknowledged that defendant was involved in prior gang activities and would "handle weapons." He maintained, however, that the Ruger had been in the bushes for weeks, the magazine was "not indigenous to that particular Ruger," and the palm print could not be dated. Counsel also showed the jury enlarged pictures of the prints and, while admitting that he was not a fingerprint expert, argued that there were visible discrepancies between the palm print on the magazine taken from the Ruger and the standard obtained from defendant.

¶ 16 Following closing arguments, the jury convicted defendant of two counts of first-degree murder (720 ILCS 5/9-1(a) (West 1998)) and unlawful possession of a stolen or converted motor vehicle (625 ILCS 5/4-103(a)(1) (West 1998)). On April 17, 1999, defendant was sentenced to death on the murder convictions and to a seven-year prison term on the stolen-vehicle

conviction. The supreme court affirmed defendant's convictions in April 2003. *Ceja*, 204 Ill. 2d 332.

¶ 17 B. Post-Conviction Proceedings

¶ 18 Meanwhile, in August 2001, defendant filed a *pro se* petition for relief pursuant to the Act (725 ILCS 5/122-1 *et seq*. (West 2000)). Subsequent to the filing of his post-conviction petition, the governor commuted defendant's death sentence to natural life imprisonment without the possibility of parole or mandatory supervised release. After seeking and receiving several continuances, defendant, through counsel, filed an amended post-conviction petition on November 30, 2006. The trial court summarily dismissed the petition as frivolous and patently without merit on February 21, 2007. Thereafter, defendant appealed, arguing that the trial court improperly dismissed his petition at the summary-dismissal stage. *People v. Ceja*, 381 Ill. App. 3d 178 (2008). We agreed, holding that the filing of an amended petition causes a new 90-day period to run only while post-conviction proceedings are still in the first stage. *Ceja*, 381 Ill. App. 3d at 182. Because the proceedings had passed to the second stage of the post-conviction process, the filing of the amended petition did not trigger a new 90-day period during which the court could summarily dismiss defendant's petition. *Ceja*, 381 Ill. App. 3d at 180-84. Accordingly, we remanded the matter for further proceedings. *Ceja*, 381 Ill. App. 3d at 184.

¶ 19 Following remand, defendant's post-conviction counsel withdrew from the case, and, on June 17, 2008, attorney Richard McLeese filed his appearance on defendant's behalf. After receiving numerous extensions of time, McLeese filed a second-amended post-conviction petition on January 14, 2013. The petition raised three principal claims. Relevant to this appeal is the claim that trial counsel was ineffective for failing to properly challenge the "dubious" palm-print evidence admitted at trial. In particular, defendant argued that trial counsel rendered

constitutionally deficient assistance where he asserted in closing argument that there were significant differences between the palm print on the magazine from the Ruger and the known standard obtained from defendant, but failed to hire an independent expert to review and analyze this evidence or to challenge the evidence through meaningful cross-examination at trial.

¶ 20 On January 24, 2013, defense counsel filed exhibits in support of the second-amended post-conviction petition. Among these exhibits was a transcript of Wojcik's trial testimony, a transcript of trial counsel's closing argument, and the affidavit of Michele Glasgow. Glasgow, who described herself as a "latent print expert" with Forensic Science Consultants, did not examine the prints at issue, but did review Wojcik's testimony. Glasgow opined that Wojcik's work should have been reviewed by another expert, preferably one working for the defense. Glasgow also questioned the methods used by Wojcik to create the latent print. She opined that had Wojcik used better methods, he may have obtained a print more suitable for comparison.

¶ 21 On January 29, 2013, defendant filed a "Motion for Discovery," requesting "access to all materials relating to the palm-print evidence introduced by the State at [his] trial, so that these materials can be reviewed and analyzed by an independent defense expert." Defendant claimed that he needed an independent defense expert to examine the palm-print evidence to fully develop and present his ineffective assistance of counsel claim. The trial court denied defendant's motion on that same date.

¶ 22 On May 31, 2013, the State filed a motion to dismiss and memorandum of law in support thereof. With respect to the argument about the palm print, the State asserted that the claim was waived as it did not involve extra-record material. The State further argued that if the argument about the palm print was not waived, the record refuted defendant's ineffective assistance of counsel claim because: (1) trial counsel attacked the palm-print evidence; (2) trial counsel

engaged in meaningful cross-examination of the State's expert; and (3) defendant made no argument that but for trial counsel's failures, the outcome of the trial would have been different as required to demonstrate prejudice pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984).

¶ 23 Argument on the State's motion to dismiss was heard on August 29, 2013. On September 26, 2013, the trial court granted the motion to dismiss. Relevant here, the court found that the claim regarding palm-print evidence was waived, as the affidavit of Glasgow, which was attached to defendant's second-amended post-conviction petition, did not provide any evidence outside of the record. The court also found that nothing in the trial record undermined the integrity of the process that the State's palm-print expert employed and that *Strickland* does not require that a defense attorney retain an expert for a second opinion on every piece of evidence that is examined by a State expert. As such, the fact that trial counsel did not employ a palm-print expert did not establish deficient performance. Additionally, the trial record demonstrated that the decision not to have a defense expert on the palm print was a reasonable trial strategy. The court noted that trial counsel focused on the fact that the palm print could not be dated and that defendant handled weapons during gang activities. If defendant's print was on the weapon, it could be the result of handling the gun well before the murders. The court further cited trial counsel's argument in the alternative that the jury should examine the palm print against the standard because it did not appear to match. The court also noted that it presided over and heard the evidence presented at defendant's trial. The court considered the evidence of defendant's guilt to be "overwhelming." The court concluded that there was no deficient performance and that, "based on the strength of the State's case," defendant "failed to demonstrate that the alleged errors regarding the palm-print evidence were such as to undermine confidence in the outcome of the proceedings."

¶ 24 The trial court also revisited the issue of the discovery request for materials related to the palm-print evidence so that they could be examined and analyzed by an expert. The court noted that after post-conviction counsel filed his appearance on June 17, 2008, the case was continued "time and time and time again" and the deadlines set by the court for filing the second-amended petition were "routinely ignored." The court noted that the second-amended petition was eventually filed on January 14, 2013, more than 4½ years after post-conviction counsel filed his appearance in the case. Counsel filed the exhibits to the post-conviction petition on January 24, 2013, and the discovery request on January 29, 2013. The court noted that Glasgow's affidavit was prepared on November 20, 2012, two months before the discovery request, yet no request for discovery was made until after the petition was filed. The court went on to state that the discovery request was a "fishing expedition" and that defendant failed to demonstrate "any good cause" for the discovery request. Defendant filed a timely notice of appeal on October 28, 2013.

¶ 25 II. ANALYSIS

¶ 26 The Act provides a process by which a criminal defendant may challenge his or her conviction. 725 ILCS 5/122-1 *et seq*. (West 2012). To be accorded relief under the Act, the defendant must establish "a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both" in the proceedings which resulted in his or her conviction. 725 ILCS 5/122-1(a)(1) (West 2012); *People v. Simpson*, 204 Ill. 2d 536, 546 (2001). Because a post-conviction proceeding is a collateral attack on the trial court proceedings, issues that were decided on direct appeal are barred by the doctrine of *res judicata* and issues that could have been raised, but were not, are forfeited. *People v. Beaman*, 229 Ill. 2d 56, 71 (2008).

¶ 27 In noncapital cases, the Act provides a three-stage process for the adjudication of a post-conviction petition.[1] *People v. Harris*, 224 Ill. 2d 115, 125 (2007). The present case involves a dismissal at the second stage of the post-conviction process. At this stage, the trial court may appoint counsel to represent an indigent defendant (725 ILCS 5/122-4 (West 2012)), and counsel will have an opportunity to amend the petition (*People v. Boclair*, 202 Ill. 2d 89, 100 (2002)). In response, the State either answers or files a motion to dismiss the petition. 725 ILCS 5/122-5 (West 2012); *People v. Vasquez*, 356 Ill. App. 3d 420, 422 (2005). The trial court must then determine whether the allegations of the petition, supported by the trial record or accompanying affidavits, make a substantial showing of a constitutional violation. *Simpson*, 204 Ill. 2d at 546-47; *People v. Edwards*, 197 Ill. 2d 239, 246 (2001). If such a showing is made, the trial court will proceed to the third stage and conduct an evidentiary hearing on the merits of the petition. 725 ILCS 5/122-6 (West 2012); *Boclair*, 202 Ill. 2d at 100.

¶ 28 On appeal, defendant acknowledges that in its current form, his petition does not warrant an evidentiary hearing. However, defendant attributes this to the trial court's failure to grant his discovery motion. As noted earlier, that motion requested access to palm-print evidence introduced by the State at trial so that the materials could be reviewed and analyzed by an independent defense expert. Defendant asserts that he demonstrated good cause for the discovery request, particularly where he alleged in his post-conviction petition that trial counsel

[1] In this case, defendant was originally sentenced to death. As noted above, however, subsequent to the filing of his *pro se* post-conviction petition, the governor commuted defendant's death sentence to natural life imprisonment without the possibility of parole or mandatory supervised release. As such, the procedure applicable to noncapital offenders applies here.

was ineffective for failing to obtain an independent analysis of the palm-print evidence. According to defendant, the trial court's ruling made it impossible to support his ineffective assistance of counsel claim because, without the requested discovery, he was unable to establish the existence of a potential defense expert who would have disagreed with the State's expert. Defendant requests a remand for new post-conviction proceedings at which he is allowed the requested discovery.

¶ 29 The State responds that the trial court did not abuse its discretion in denying defendant's discovery motion. According to the State, the discovery motion constituted nothing more than a "fishing expedition" as the requested materials would not have benefitted defendant. The State further suggests that an opinion that Wojcik's conclusion was flawed, or even an opinion that the partial palm print recovered from the magazine taken from the Ruger did not match defendant's palm print, would not have likely altered the outcome of this case.

¶ 30 We do not address whether the trial court abused its discretion in denying defendant's discovery motion, for we are compelled to agree with the State's position. That is, even assuming defendant had presented testimony from a defense expert that Wojcik's conclusion was flawed or that the partial palm print recovered from the magazine inside the Ruger did not match the standard obtained from defendant, we conclude that the outcome of the trial would not have been different.

¶ 31 In his second-amended post-conviction petition defendant asserted that trial counsel was ineffective for failing to properly challenge the "dubious" palm-print evidence admitted at trial. In particular, defendant argued that trial counsel rendered constitutionally deficient assistance where he asserted in closing argument that there were significant differences between the palm print on the magazine from the Ruger and the known standard, but failed to hire an independent

expert to review and analyze this evidence or to challenge this evidence through meaningful cross-examination at trial. To succeed on a claim of ineffective assistance of counsel, a defendant must satisfy the two-pronged test set forth in *Strickland*, 466 U.S. 668 (1984), and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504, 526-27 (1984). Under *Strickland*, a defendant must show that his attorney's performance was deficient and that the attorney's deficient performance resulted in prejudice. *Strickland*, 466 U.S. at 687. To demonstrate a performance deficiency, a defendant must establish that counsel's performance fell below an objective standard of reasonableness. *People v. Edwards*, 195 Ill. 2d 142, 162-63 (2001). To establish prejudice, a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Strickland*, 466 U.S. at 694. If either prong of the *Strickland* test is not satisfied, then the defendant has not established ineffective assistance of counsel. *Strickland*, 466 U.S. at 697.

¶ 32 In its decision on defendant's direct appeal, the supreme court determined that the evidence in this case "was not closely balanced." *Ceja*, 204 Ill. 2d at 354. Of course, that determination was made under a plain error analysis. However, in ruling on the petition before us, the trial court noted that it personally heard the evidence presented at trial. The court concluded that the evidence implicating defendant in the murders of Sanchez and Garcia was "overwhelming." After reviewing the record, we agree.

¶ 33 The record establishes that defendant was positively identified as one of the two men who, two days before the murders, stole the Tahoe from which the fatal shots were fired. Eyewitnesses to the shooting observed three occupants in the Tahoe. All three occupants shot at

the victims' car. Eyewitnesses described the driver and front passenger of the Tahoe as Hispanic males wearing hooded sweatshirts. Following the shooting, a chase ensued, with the Tahoe pulling into an alley and the occupants of the vehicle fleeing. Approximately 10 minutes later, defendant and Soto were found hiding in a bush a short distance from where the Tahoe had been abandoned. Both men were sweating and breathing heavily. Both defendant and Soto were identified as members of the same gang. Defendant knew that Sanchez, one of the victims, was a member of a rival gang and that his gang nickname was "Boxer." Further, on the date the Tahoe was stolen, defendant's home was the target of a drive-by shooting.

¶ 34 After defendant was apprehended, he told a police officer that one gun had been used in the murders and that the gun had been discarded in a yard. Officers recovered two hooded sweatshirts near the abandoned Tahoe and the bush where defendant and Soto were hiding. Officers also recovered two handguns in the same area: a Smith & Wesson nine-millimeter handgun and a Ruger nine-millimeter handgun. Defendant's gang kept the two handguns concealed in bushes so that gang members could easily access them. Two days prior to the murders, Soto asked another gang member for the guns and then walked off in the direction of the bushes in which the guns were hidden. Soto's fingerprints were found at several places on the outside of the Tahoe and on an empty box of bullets recovered from the vehicle. Ballistics evidence showed that spent cartridges found inside the Tahoe and the victims' car were fired from the two handguns used in the murders and that the Smith & Wesson fired the bullets recovered from the victims' bodies. Forensic evidence established a "good probability of common origin" between glass taken from the Tahoe window, glass found at the scene of the shooting, and glass found on defendant's shoes.

¶ 35 While being taken to the police station, defendant suggested that he would likely to be in prison for a long time when he commented that the transporting officer might "be a detective by the time [defendant] get[s] out." Defendant also asked the transporting officer "if the people were all right." Further, while defendant and Soto were housed in the detention area of the Elmhurst police station, defendant laughed after Soto commented that he and defendant were innocent. One of the men later remarked, "that guy shot up our town," prompting the other man to reply, "We found them." Both men then laughed again.

¶ 36 Despite this evidence, defendant asserts that the palm-print evidence was the strongest evidence linking him to the murders. He acknowledges that there was other evidence connecting him to the murders, but claims that none of it directly implicated him in the crimes. As outlined more thoroughly above, however, defendant was positively identified as one of the two men who stole a Tahoe from which the fatal shots were fired. Defendant was found sweating and out of breath in the vicinity of the abandoned Tahoe. Defendant alerted a police officer to the location of the weapons. Ballistics evidence tied the handguns to the murders. There was a "good probability of common origin" between glass taken from the Tahoe window, glass found at the scene of the shooting, and glass found on defendant's shoes. Defendant made several incriminating statements while in police custody and while in the holding cell at the police station. Moreover, the State presented evidence of motive based upon defendant's gang affiliation and the drive by shooting targeting defendant's home. Quite simply, this evidence, coupled with the fact that trial counsel challenged several aspects of the palm-print evidence, compels us to conclude that an opinion that Wojcik's conclusion was flawed or that the partial palm print recovered from the magazine taken from the Ruger did not match defendant's palm print, would not have changed the outcome of the proceedings. As a result, defendant cannot

establish that he was prejudiced by trial counsel's alleged ineffective assistance. Therefore, we conclude that the trial court properly dismissed defendant's second-amended post-conviction petition.

¶ 37 III. CONCLUSION

¶ 38 For the reasons set forth above, we affirm the judgment of the circuit court of Du Page County, which dismissed defendant's second-amended post-conviction petition at the second stage of the post-conviction process. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2012); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 39 Affirmed.