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2011 IL App (5th) 090156-U

NO. 5-09-0156

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

V.

JAMES MILLER,

Defendant-Appellant.

) Appeal from the
) Circuit Court of
) Madison County.

) No. 03-CF-1363

) Honorable
) James Hackett,
) Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* Trial counsel was not ineffective because his decision not to call certain witnesses to testify at the trial and not to impeach two State witnesses with prior inconsistent statements was trial strategy and did not prejudice the defense of the case.

¶ 2 On July 27, 2007, following a jury trial in the circuit court of Madison County, the defendant, James Miller, was convicted of two counts of murder and one count of armed robbery. On August 29, 2007, he was sentenced to natural life in prison. The defendant filed a motion to reduce his sentence and a motion for a new trial. The motions were denied. The defendant filed a timely notice of appeal alleging ineffective assistance of counsel. We affirm.

3 BACKGROUND

¶ 4 At approximately 2 a.m. on April 25, 2003, Melvin Harris and Clyde Bailey were shot and killed in a parking lot adjacent to the Time Out Lounge, in Alton,

Illinois. The defendant was arrested for their deaths, and the State charged him with aggravated discharge of a firearm, armed robbery, and seven counts of first-degree murder.

¶ 5 John T. Haynes testified that he was at the Time Out Lounge on the night of the shooting. He stated that when he was walking from his car to the Time Out Lounge, he noticed two men sitting in a car watching a monitor. He described it as "an in-dash T.V. screen." He stated that he noticed the screen because, at the time, they were unusual. Evidence at the trial indicated that the men in the car were the victims, Melvin Harris and Clyde Bailey.

¶ 6 Tiffany Chamberlain testified that she dated victim Melvin Harris. She testified that on the evening of Thursday, April 24, 2003, she went to the Time Out Lounge. While there, Harris telephoned Chamberlain and arranged to meet her outside the club so they could go to breakfast. While walking to her sister's car when the club closed at 2 a.m., she heard gunshots. She decided to look for Harris and spotted his car across the parking lot. She noticed that there were many people around the car. She stated, [W]hen there's a lot of people around, there's always trouble." She got into her sister's car and they drove around the parking lot. When they approached Harris's car, she saw shattered glass and saw Harris. She tried to approach the car, but the police asked her to stay back. She informed the police that she knew Harris.

¶ 7 John Harper testified that in April of 2003 he wore his hair braided. He hung out at 2716 Arlington Avenue, St. Louis, Missouri, almost daily. While hanging out at the building on Arlington he saw the defendant with a 9-millimeter automatic with a black handle, he saw Anwar Randle with a .22 automatic, and he saw the defendant's brother, Stanley Williams, with a rifle. Harper testified that he had a .380

automatic. Sometime prior to the shooting, Harper saw Randle with a "messed up" eye and footprints on his shirt. Randle told him that he had been beaten up at the Time Out Lounge.

¶ 8 Harper testified that on April 24, 2003, he went to the Bass Pro Shop with the defendant, Donald Hayes, and a man named Courtney, so that the defendant could buy bullets for himself and Harper. Later that evening, the group decided to go to the Time Out Lounge to get back at the people who beat up Randle. Several cars were taken to Alton, including the defendant's Cadillac, a red truck, and a Grand Prix. He stated that he did not bring a gun but that Williams brought a rifle that he put in the back of Bill Vickers' truck. Randle brought a .22 automatic, and the defendant brought a 9-millimeter automatic. Harper did not bring his gun because the bullets that had been purchased at the Bass Pro Shop did not fit. He stated that they left the building on Arlington Avenue at about 11 p.m. and arrived at the Time Out Lounge at about midnight.

¶ 9 Harper testified that, when they arrived at the Time Out Lounge, they parked in a nearby parking lot. Harper and some others stayed in the lot drinking, smoking marijuana and listening to music, while Randle and some of his friends went into the Time Out Lounge. At some point, Randle told the group that the people who beat him up were not in the club. The defendant walked around looking in cars. The defendant told Harper that he saw a car with a television in it and that he was going to steal it and "merk" the people in the car. Harper defined "merk" as kill.

¶ 10 Harper testified that when the Time Out Lounge closed, Randle exited the club and the defendant told him about the plan to take the television. Randle retrieved his gun, and the defendant, Randle, and Harper approached the driver's side of the car with the television. The defendant then put the gun in the car and started pulling the

trigger. The gun did not work because he had to chamber the ammunition. The two men inside the car tried to get out but were unable to because the defendant chambered the gun too quickly. Harper stated that the defendant then said something to the effect of "it's over," put the gun through the car window, and started shooting. The defendant fired all of his bullets and walked back to his car. Harper testified that he reached into the car, yanked the television from the dashboard, and walked back to the defendant's car. Randle returned to the car he was driving. Randle did not fire his gun in the parking lot.

¶ 11 As they drove back to the building on Arlington Avenue, Harper and the others in the car saw Randle shooting at another car as they crossed the Lewis and Clark bridge. Harper testified that the defendant tried to shoot but that his gun was empty and did not fire.

¶ 12 Harper stated that when the group arrived at the building on Arlington Avenue, the defendant acted excited. Bill Vickers confronted the defendant about the shooting, telling him "it was stupid and no reason to do that." The defendant "snapped" and tried to shoot Vickers. The defendant then told all the men in the room, "talk and you are dead." Harper testified that he believed the defendant's threat.

¶ 13 Harper said he learned that the police were looking for everyone involved in the incident. On May 13, 2003, he contacted the police because he was "tired of running." He went to the crime scene with the police and was videotaped describing the murder. He also gave a written statement. Harper testified that he did not know Harris or Bailey, that they were not the men who beat Randle up, and that "they just was [*sic*] in the wrong place at the wrong time."

¶ 14 On cross-examination Harper admitted that he received a deal in exchange for his testimony against the defendant and Randle. A nine-count indictment was filed

against him and he pled guilty to one count, the death of Bailey. He received 25 years' imprisonment in the Department of Corrections.

¶ 15 Donald Hayes testified that he knew the defendant and had seen him with a 9-millimeter gun prior to the night of the shooting. On April 24, 2003, he accompanied the defendant to a sporting goods store in St. Charles, where the defendant purchased 9-millimeter and .38-caliber ammunition. Later that night, Hayes, the defendant, Harper, and Carlos Robinson took the defendant's Cadillac to the Time Out Lounge. Hayes stated that Randle put together a group of guys to beat up the people who had beat him up at the Time Out Lounge. Randle drove a white Grand Prix over to the club, and a "bunch of cars" drove over. Hayes related what the defendant told them on the way to the Time Out Lounge, "[W]e was going to see a different side of him tonight." Hayes testified that Randle brought what Hayes described as a little gun, a .22- or .25-caliber, with him.

¶ 16 Hayes stated that around the time he thought they were getting ready to leave, he turned and saw the defendant, Randle, and Harris walk toward another car. Hayes said that when they reached the car, the defendant started shooting rapidly and then Harper reached in and pulled out a television. The men ran back to the car, and they left.

¶ 17 Hayes testified that Randle was one lane over and ahead of the Cadillac on the drive back to the building on Arlington Avenue. Hayes testified that as they were crossing the Lewis and Clark bridge, "[Randle] pulled up on a car, and he started shooting." The Cadillac swerved around the car and kept driving. Hayes stated that the defendant tried to shoot at the car but did not "actually g[e]t any shots off." He described the atmosphere at the building on Arlington Avenue, when they arrived: "[It was] shocked, hysterical. It was not normal." The defendant was acting nonchalant.

¶ 18 Carlos Robinson testified that he went to the Time Out Lounge in April 2003 to help Randle fight the guys who had jumped him previously at the Time Out Lounge. He stated that, in addition to himself, the defendant, Hayes, Harper, Randle, Uhe, Williams, and a couple other guys he did not really know went to the Time Out Lounge. He rode there in the defendant's Cadillac. He testified that the defendant did not show him his gun but that the defendant carried his gun with him "three-fourths of the time." He had seen the defendant with a 9-millimeter. He had seen Randle with a "little bitty pocket gun."

¶ 19 Robinson testified that he was unable to get into the Time Out Lounge or a nearby bar because he was underage. Robinson stated that he and Williams hung out near the Cadillac. The defendant walked around the parking lot. Once the Time Out Lounge closed, everybody started exiting. Robinson heard shots, people started running, and he ran to the car and jumped in. Hayes was already in the car. Robinson stated that when he heard the shots, he was a little scared and was just trying to get out of there. Robinson started backing up to exit the parking lot, and the defendant jumped in the backseat with a gun in his hand. When the defendant got in the car, he yelled at Robinson to get off the lot. When the defendant got in the car, he said: "I hit the mother fucker up. I hit the mother fucker up." At the time, Robinson did not know exactly what the defendant meant. It was not until the next day that Robinson learned that people had been killed in the shooting.

¶ 20 Robinson testified that on the way home, while on the Lewis and Clark bridge, Randle started shooting at a little gray car. The defendant tried to shoot but "his gun jammed or something." When they got back to the building on Arlington Avenue, the defendant told everybody that he would kill them if they said anything about what had

happened in Alton.

¶ 21 Bill Vickers testified that, in April 2003, he lived in the building on Arlington Avenue with Williams and Williams' girlfriend. Randle lived with them at times. He stated that on April 23 and April 24, 2003, a plan was made for Randle's friends to go to the Time Out Lounge to "show support" for him. They planned to go "with an intention that just in case something happened they would be prepared." Vickers testified that he drove his red truck to the Time Out Lounge, the defendant drove his Cadillac, and Randle drove the Grand Prix belonging to Vickers. In addition, a red Jeep Cherokee, a red Sebring, a Probe, and a couple of other cars that he had never seen before went. Vickers stated that the defendant brought a 9-millimeter gun, Randle brought a small pistol, and Williams brought a long rifle.

¶ 22 When Vickers arrived at the Time Out Lounge, he did not go in. Instead, he hung around his truck. Randle and a few others went into the club. Randle came out a few minutes before the club closed and told Vickers that the people Randle was looking for were not in the club. Vickers started to get ready to leave. A couple of minutes later, the defendant came up and told Vickers to take Williams and get off the lot. As he started to leave, gunshots rang out and it turned chaotic. Vickers eventually maneuvered his truck off the lot and drove to a side street to wait to see if the defendant's car and the Grand Prix made it off the lot. Once both cars drove by, he headed towards the Lewis and Clark bridge. The other cars were ahead of him, and he did not see them on the bridge. When he crossed the bridge, he saw a silver Camaro or Pontiac on the side of the road, and it looked like it had been in an accident.

¶ 23 When Vickers arrived home, people were in the apartment joking and laughing. Vickers learned the details of the shooting. Vickers saw the television in

his apartment and said that he did not feel it was "worth someone dying over." The defendant confronted him "face to face." Vickers described what the defendant told him: "[H]e didn't do it just for a TV[;] he did it to send a message no one messes with his partners or what not." Vickers described what the defendant told him: "[I]f I didn't like it then he would kill me right then and now." Before the defendant left, he told everyone that if anyone told, he was going to kill them and that if he did not kill them, he expected someone else in the room to kill them. Vickers took this threat seriously.

¶ 24 On May 6, 2003, the police questioned Vickers, and he told them he knew nothing about the crime. Vickers testified that he told the police this because he had been told that state trials do not have a witness-protection program and that if he talked, he would be killed. The police contacted him again on May 13, 2003, and he gave them a written statement about the crime. Vickers testified that he decided to speak to the police because, after Williams had been "picked up," the defendant broke his door down, accused him of telling, and threatened to kill him. The defendant then stormed off. Scared for his life, Vickers packed some clothes and left his apartment on Arlington Avenue.

¶ 25 Jerome Kimmins testified that, prior to the incident at the Time Out Lounge, he had seen the defendant with a 9-millimeter gun and had seen Randle with a .22-caliber gun. He did not go to the Time Out Lounge with the group because he had to work. He lived in the building on Arlington Avenue. When everybody returned home after the shooting at the Time Out Lounge, Kimmins went outside and stood on the front porch with Hayes. Kimmins testified that the defendant came outside and said that he had shot two people.

¶ 26 Patrick Pipes testified that he resides next door to the building on Arlington

Avenue. After everyone got back from the Time Out Lounge, he heard the defendant say, "I killed two niggers for a TV." He also heard the defendant say, that if anyone told on him, "somebody would take care of it, take care of business."

¶ 27 Nedra Smith testified that she was a "sexual friend" of the defendant. She stated that, the evening after the shooting, the defendant told her he would not "be coming around for a while." When she asked why, he told her it was because "he killed two dudes last night." She stated she was shocked and scared and did not ask any more about what he said.

¶ 28 Leonard Perry testified that he was at the Time Out Lounge on the night of the shooting. At closing, he left the club and went to the parking lot to look for a friend who was supposed to pick him up. He heard numerous gunshots. He saw the shooter on the driver's side of a car shooting a black 9-millimeter gun. The shooter was standing in the middle of two other men. The man in the driver's seat slumped over, and the passenger got out of the car. Once the shots ended, Perry saw a man with braids, not the shooter, reach into the car and grab something. The three men then quickly walked away. That evening, he reported to the police what he had seen. Perry was 5 to 10 feet away from the shooter during the shooting. He did not drink or use any kind of controlled substance that night.

¶ 29 On May 4, 2003, the police came to Perry's house to show him some photographs. He did not recognize anyone in the photographs as having been involved in the shooting. On May 9, 2003, Jason Simmons, a detective sergeant with the Alton police, went to Perry's house and showed him two photographic lineups to see if he could identify anyone from the shooting. Simmons testified that once the photographic lineup was laid out, Perry immediately pointed to the picture of the defendant and identified him as the shooter. Perry testified that he did not know the

victims or any of the men involved in the shooting.

¶ 30 Scott Golike, a police officer for the City of Alton, testified that, in the early morning hours of April 25, 2003, he was contacted to investigate a shooting that had just occurred in the parking lot near the Time Out Lounge. He stated that there was a bracket on the dash of the victims' car that held some type of equipment but that the equipment was missing. The dash appeared to have been ripped apart by force. The passenger door was open and it appeared that Bailey had fled on foot until he collapsed. Sergeant Golike stated that he collected 9-millimeter shell casings from the driver's door of the vehicle and from the parking lot and a projectile from the parking lot halfway between the victims' vehicle and where Bailey collapsed.

¶ 31 Rory Rathgeb, a police officer with the Alton police department, testified that he was called out to investigate the shooting deaths of Harris and Bailey. Upon arriving at the scene, he assisted Sergeant Golike. He collected two projectiles and examined the casings found at the scene. Officer Rathgeb testified that he is a police firearms instructor at the Olin Corporation and that he deals with a lot of casings and projectiles. The recovered projectiles were unusual in shape and were unlike any he had ever seen. The base of the spent casings were stamped RP, which stands for Remington Peters. He contacted the manufacturer and, through investigation, learned that the bullet was a 147 Gram Subsonic 9-millimeter bullet typically sold through large retailers such as the Bass Pro Shop. The Bass Pro Shop in St. Charles, Missouri, was the closest retailer that sold these bullets. Officer Rathgeb went to the Bass Pro Shop in St. Charles and obtained a receipt signed by the defendant on April 24, 2003, at 6:45 p.m. for the purchase of 147 Gram Subsonic 9-millimeter bullets.

¶ 32 Detective Jason Simmons of the Alton police department testified that he was assigned to assist in the investigation of the deaths of Harris and Bailey and in the

investigation of the shooting on the Lewis and Clark Bridge. When investigating the bridge shooting, while walking the bridge, he found a spent .25-caliber shell casing near a lightpost. He testified that he accompanied Detective Rathgeb to the Bass Pro Shop. The security officer at the shop had video surveillance of the defendant, Hayes, Harper, and another black male entering the store and the defendant purchasing ammunition on April 24, 2003. The video showed the defendant leading the group out to the parking lot and getting into a Cadillac. The security officer pulled the receipt from the transaction, and it showed that the defendant purchased 9-millimeter subsonic and .380-caliber pistol ammunition.

¶ 33 Forensic pathologist Dr. Raj Nanduri testified that she performed autopsies on Harris and Bailey. Harris had 13 gunshot wounds, 3 of which were fatal wounds. Bailey had five gunshot wounds, one of which was fatal.

¶ 34 Dustin West testified that in June 2003, he was an inmate at the Madison County jail, and he shared a cell with the defendant. On June 25, 2003, he and the defendant were involved in an altercation. The two men started fighting, and the defendant grabbed two pencils and began stabbing West. West described what the defendant said as he stabbed him: "[H]e was going to kill me like he said he killed two people, and he was going to kill me and he wasn't afraid."

¶ 35 Christopher Mattila testified that he is a police officer with the Alton police department. He stated that Detective Sergeant Lakin contacted him about a letter from the defendant. On June 24, 2003, he interviewed the defendant. Officer Mattila testified that the defendant was shown the letter, he acknowledged that he wrote the letter, and he stated that he wanted to tell his side of the story. The letter was addressed to Captain Gulash, the superintendent of the Madison County jail. Officer Mattila read the letter to the jury. The letter read as follows:

"This is Miller, James, number 58518. I am in here in a double murder case that happened at the club Time Out in Alton. I would like to make a confession. Is there any way you can notify my lawyer, the prosecution attorney or the Alton detectives of this? Thank you for your time and patience. Respectfully, James E. Miller, Jr., Yes, I would like to make a confession about the double murder case."

¶ 36 Once the defendant acknowledged the letter was his, Officer Matilla read each of the defendant's *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)) to him and the defendant initialed the form indicating he understood the warnings. The defendant told Officer Mattila that the shooting was an accident and that it was not a robbery. The defendant told him that he was drunk when it occurred and that he had gone to Alton to protect his brother Stanley Williams because Randle had recently gotten him into the Black Disciple gang. Officer Mattila told the defendant about the Bass Pro Shop evidence. The defendant admitted that he had gone to the Bass Pro Shop and purchased ammunition with his credit card on April 24, 2003. He stated he purchased the ammunition for Randle, Robinson, and Hayes. He denied having a gun. Initially, the defendant told Officer Mattila that when they arrived at the parking lot, they just hung around the lot while Randle went inside to find the men who had beat him up the prior week. He reported that when Randle came out of the club, Randle stated that one of the people who had beat him up was getting into a car in the parking lot. The defendant said that he, Harper, Robinson, and Oowee walked up to the driver's side of the car and that the people in the car had guns. He then said, "[T]hem mother fuckers just started shooting." When asked who he was referring to, he did not answer. Officer Mattila specifically asked the defendant if he meant that he was the one who shot Harris and Bailey. Officer Mattila stated, "[The defendant] looked down, he looked up at the wall for a little while, for a few seconds, and he turned back

and looked at me and said[:] ['I know what you want me to do[:] I'm not going to tell on myself[:] you and I know that I did it.['] " The interview ended shortly after that answer.

¶ 37 Endalyn Burgess testified for the defense. She stated that on April 25, 2003, she was walking to her car from the Time Out Lounge when she heard shooting. She heard five or six shots and then ducked down. She looked up to see what was happening and saw two men, one on the driver's side of the car and one on the passenger's side. She saw them walk away from the victims' car. She did not see their faces, but she remembered that one man wore a hat and the other had braids. She spoke to the police and viewed three or four lineups but was unable to identify anyone. She stated that she did not know whether the men she saw had done the shooting.

¶ 38 The jury found the defendant guilty of the armed robbery and first-degree murder of Harris and Bailey. On August 1, 2007, the defendant filed a *pro se* notice of a motion for a new trial, in which he informed the court that he planned to file a motion for a new trial. On August 14, 2007, the defendant, through his attorneys, filed a motion for a judgment of acquittal or, in the alternative, a motion for a new trial. On August 21, 2007, the defendant filed a *pro se* motion for a new trial alleging that he was denied the effective assistance of counsel. Specifically, the defendant alleged that his attorney was ineffective for failing to call Natasha Wade, Jada Martin, Tiffany Perkins, Arrethie Williams, Anthony Womack, and Anwar Randle as witnesses, that he failed to impeach the State's witnesses, and that he should have objected to the testimony of Carlos Robinson because he admitted that he smoked marijuana almost daily and that he had smoked it the morning he testified.

¶ 39 On March 30, 2009, the court held a hearing on the defendant's motion for a

new trial. The defendant argued that had the six witnesses been called to testify, they would have provided information or testimony favorable to him or would have given testimony that countered the testimony of Harper and Hayes. The defendant did not call any witnesses. The State called Dan Schattnik, the defendant's lead trial attorney. He testified that he made the decisions about which witnesses to call. Attorney Schattnik testified that Natasha Wade was not called as a witness because, during his interviews with her, she was unable to describe the shooter and, when she gave her statement to the police after the shooting, she could not describe the shooter. Attorney Schattnik stated he did not call Jada Martin because he was unable to locate her. He deposed her on April 7, 2005, but was unable to find her for the trial. He had investigators for the Death Penalty Trial Assistance Division and a privately retained investigator look for her without success. When Endalyn Burgess came to testify at the trial, she told attorney Schattnik that Martin had moved to Texas. Attorney Schattnik testified that he did not call Tiffany Perkins because he deposed her on May 2, 2007, and she did not remember the details of the statement she had given to the Alton police department. Additionally, she said she did not see the face of the shooter. He stated he chose not to call Arrethie Williams as a witness because, when he interviewed her, she did not agree with what was presented to him as her statement from the Alton police department. She indicated that the Alton police department included information in her statement that was not true.

¶ 40 Anthony Womack gave statements to the Alton police on April 29 and May 14, 2003. In his first statement, he stated that Randle was the shooter. In the second statement, he said that he had been trying to help the police but that he did not see the shooter. Attorney Schattnik stated that he found numerous Anthony Womacks, including two in federal custody for drug charges. Upon contacting them, the

individuals denied that they were the person attorney Schattnik was looking for or they failed to appear when served with a notice of a deposition.

¶ 41 Attorney Schattnik testified that he attempted to interview Randle. Randle agreed to talk to attorney Schattnik alone, without any investigators present. Attorney Schattnik made arrangements to bring an investigator to the interview anyway. The investigator from the Death Penalty Trial Assistance arrived at the correction facility prior to attorney Schattnik's arrival. He called attorney Schattnik and informed him that Randle refused to come out of his cell to be interviewed by attorney Schattnik. Attorney Schattnik testified that he opted not to "put what [he] viewed as a loose cannon on the stand without an opportunity to interview him." Additionally, attorney Schattnik stated that Randle gave a signed written statement to the Alton police department indicating that the defendant shot the victims. He also sent "enticing letters" to attorney Schattnik giving the impression that he might provide worthwhile information. During the course of discovery, attorney Schattnik learned that he was sending equally enticing letters to the State.

¶ 42 The matter was taken under advisement, and on March 30, 2009, the trial court denied the defendant's motion for a new trial on the ground that there was no support for the contentions alleged in the motion. The court stated that the defendant's contentions "are not supported by the record and have been fully and reasonably contradicted by the testimony of his former attorney in this matter." The defendant filed a timely notice of appeal.

¶ 43 ANALYSIS

¶ 44 The defendant argues that his trial counsel was ineffective because he failed to present the testimony of several critical witnesses, did not move for a continuance to secure the witnesses, and failed to impeach two State witnesses with their prior inconsistent statements.

¶ 45 The standard of review for an ineffective-assistance-of-counsel claim was enunciated

in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by the Illinois Supreme Court in *People v. Albanese*, 104 Ill. 2d 504 (1984). *People v. Moore*, 356 Ill. App. 3d 117, 121 (2005). To establish that counsel was ineffective, a defendant must prove both (1) that his attorney's performance fell below an objective standard of reasonableness and (2) that the deficient performance prejudiced the defense of the case. *Strickland*, 466 U.S. at 687. To establish that an attorney's performance was deficient, the defendant must overcome a strong presumption that counsel's challenged action or inaction was the product of sound trial strategy. *Strickland*, 466 U.S. 689. To prejudice the defense, there must be a reasonable probability that the results would have been different, that is, a probability sufficient to undermine confidence in the outcome. *People v. Evans*, 209 Ill. 2d 194, 200 (2004). Unless the defendant makes both showings, it cannot be said that the conviction resulted from a breakdown in the adversary process that rendered the results unreliable. *Strickland*, 466 U.S. at 687.

¶ 46 The defendant argues that his trial counsels' failure to call several witnesses to testify on his behalf was objectively unreasonable. Specifically, he argues that his trial counsel should have called Anthony Womack, Natasha Wade, Jada Martin, Tiffany Perkins, and Arrethie Williams. "The decision whether to call particular witnesses is a matter of trial strategy and thus will not ordinarily support an ineffective-assistance-of-counsel claim." *People v. Patterson*, 217 Ill. 2d 407, 442 (2005). A court deciding whether counsel was ineffective must judge the reasonableness of counsel's challenged conduct on the facts of the case viewed at the time of counsel's conduct. *Strickland*, 466 U.S. at 690. In making that determination, the court must judge whether the acts or omissions alleged fall outside the wide range of professionally competent assistance. *Strickland*, 466 U.S. at 690. Attorney Schattnik testified at the hearing on the defendant's motion for a new trial. He explained the reasons he did not call the various witnesses.

¶ 47 The defendant argues that his trial counsel should have called Natasha Wade to testify because, in her statement to the police, she said she saw only one person approach the victims' vehicle and fire shots. The defendant argues that this contradicts Harper's statement that three people approached the vehicle and that the defendant fired the deadly shots. Additionally, the defendant argues that it corroborates Womack's first statement to police, in which he stated that only one person approached the victims' vehicle and fired the shots. Attorney Schattnik testified that he did not call Natasha Wade because, in her statement to the police, she was unable to describe the shooter. Even if Wade testified that only one person approached the car and fired shots, she was unable to testify that the defendant was not the shooter. Additionally, Harper, Perry, and Hayes all testified that three men approached the victims' car. In Womack's second statement, he said that he did not see the shooter. Given the limited amount of information Wade could provide, it was not outside the wide range of professionally competent assistance for attorney Schattnik not to call her to testify.

¶ 48 The defendant also argues that his trial counsel should have called Jada Martin as a witness because in her police statement and at her deposition on April 7, 2005, she stated that she saw only one person near the victims' vehicle and that this person shot toward the vehicle. Attorney Schattnik testified that he was unable to locate Martin. He had investigators from the Death Penalty Trial Assistance Division and a privately retained investigator search for her. At the trial, another witness told him that she had moved to Texas. Attorney Schattnik put forth professionally competent efforts to secure Martin for the trial but was unsuccessful.

¶ 49 The defendant argues that Tiffany Perkins and Arrethie Williams both gave statements to the police in which they stated that they only saw one person near the victims' vehicle and that person fired the shots. Attorney Schattnik testified that he did not call

Perkins because he deposed her on May 2, 2007, and she did not remember the details of the statement she had given to the police. Additionally, she stated that she did not see the face of the shooter. He testified he chose not to call Williams as a witness because, when he interviewed her, she told him that the memorandum of her statement to the police contained statements she did not make. Because Perkins no longer remembered her statement to the police and Williams denied the accuracy of her statement, their testimony would have been of little value to the defendant. It was not outside the realm of professionally competent assistance for attorney Schattnik to choose not to call Perkins and Williams.

¶ 50 The defendant argues that his trial counsel was ineffective for failing to call Anthony Womack to testify. Womack gave two statements to the police. The defendant argues that Womack should have been called to testify to his first statement to the police. In his first statement, Womack said that he met Randle at the Time Out Lounge the week before the shooting. Womack told police that he was at the Time Out Lounge at the time of the shooting and that he saw Randle walk up to the driver's window and start shooting into the victims' vehicle. When he finished shooting, he reached into the car and grabbed something. Womack gave a second statement on May 14, 2003, in which he repudiated his earlier claim that he saw Randle shoot the victims. In the second statement, he said that he did not see the shooter and that he originally claimed to have seen the shooter because he wanted to help the police.

¶ 51 Attorney Schattnik testified that he did not call Womack as a witness because he was unable to locate him. He described his efforts to find Anthony Womack. The decision whether or not to call a witness is generally immune from claims of ineffective assistance of counsel because it is a matter of trial strategy, and there is a strong presumption that it was the product of strategy rather than incompetence. *People v. Clarke*, 391 Ill. App. 3d 596, 614 (2009). The defendant's claim is based on speculation that Womack would have testified

consistent with his first statement to the police and that the jury would have found him credible. A defendant cannot rely on speculation or conjecture to prevail on his claim of ineffective assistance of counsel. *Clarke*, 391 Ill. App. 3d at 614. Additionally, counsel need not call a witness if he reasonably believes that the individual's testimony is unreliable. *People v. Ligon*, 365 Ill. App. 3d 109, 119 (2006). Womack gave two different statements to the police, one in which he identified the shooter and one in which he said he did not see the shooter. Defense counsel could reasonably believe that Womack's testimony would have been unreliable.

¶ 52 The defendant argues that his counsel was ineffective for failing to impeach Carlos Robinson and Patrick Pipes. Generally, the decision not to impeach a witness is a matter of trial strategy that will not support a claim of ineffective assistance of counsel. *People v. Ford*, 368 Ill. App. 3d 562, 575 (2006). "The manner in which to cross-examine a particular witness involves the exercise of professional judgment which is entitled to substantial deference from a reviewing court." *People v. Pecoraro*, 175 Ill. 2d 294, 326-27 (1997). A defendant must show that counsel's approach to cross-examination was objectively unreasonable to prevail on a claim of ineffectiveness. *Pecoraro*, 175 Ill. 2d at 327.

¶ 53 In the instant case, the defendant argues that Carlos Robinson's trial testimony was inconsistent with his grand jury testimony. At the trial Robinson testified that, while on the Lewis and Clark bridge driving from the Time Out Lounge to the building on Arlington, the defendant tried to shoot toward another vehicle but that his gun did not fire. The defendant argues that his counsel could have impeached Robinson with his grand jury testimony where, when asked if anyone other than Randle "was shooting" on the bridge, he stated "no." The record only contains fragments of Robinson's grand jury testimony attached to the defendant's motion. If defense counsel tried to impeach Robinson with his grand jury testimony, he ran the risk of Robinson testifying that no one other than Randle was shooting on the bridge but

that the defendant pulled the trigger on his gun and it did not fire. It was not objectively unreasonable for defense counsel to choose not to try to impeach Robinson on what might or might not have been an inconsistent statement.

¶ 54 The defendant argues that his defense counsel should have impeached Pipes' trial testimony with his grand jury testimony. At the trial, Pipes testified that the defendant told him he "killed two niggers for a TV." The record only contains a portion of Pipes' grand jury testimony, attached to the defendant's motion. Pipes gave the following grand jury testimony:

"I didn't directly hear him say he killed two niggers for a t.v., but I heard him say he had been killing since he was 17. That's what he do. That's how he get down. That's his MO. I didn't hear him directly say ['I killed two niggers for a t.v.['] "

¶ 55 The defendant argues that the inconsistencies between Pipes' trial testimony and his grand jury testimony would have cast doubt on Pipes' credibility. Pipes' grand jury statement, while inconsistent with his trial testimony, described the defendant as someone who has been killing people since he was 17. That statement could prejudice the jury against the defendant. It is reasonable to believe that it was a strategic decision not to impeach Pipes with his grand jury testimony.

¶ 56 "[T]he right to effective assistance of counsel refers to competent, not perfect, representation." *People v. Briones*, 352 Ill. App. 3d 913, 917 (2004). In the instant case, defense counsel's performance did not fall below an objective standard of reasonableness.

¶ 57 The defendant is also unable to satisfy the prejudice prong of the *Strickland* analysis because he is unable to show that, but for his counsels' errors, there is a reasonable probability that the outcome of the trial would have been different. "A reasonable probability of a different result is not merely a possibility of a different result." *Evans*, 209 Ill. 2d at 220. "The question is not whether the defendant would more likely than not have received a

different result without the professional errors of counsel but whether, with their presence, he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *People v. Moore*, 279 Ill. App. 3d 152, 162 (1996).

¶ 58 There was overwhelming evidence that the defendant killed both Harris and Bailey. The bullets used in the shooting were unusual. Officer Rathgeb testified that he was unfamiliar with the bullets. Through investigation he discovered that the bullets were Remington Peters 147 Gram Subsonic 9-millimeter bullets and that the closest retailer was the Bass Pro Shop in St. Charles, Missouri. Officer Rathgeb went to the Bass Pro Shop and obtained a credit card receipt signed by the defendant for the purchase of Remington Peters 147 Gram Subsonic 9-millimeter bullets. Detective Simmons testified that he accompanied Officer Rathgeb to the Bass Pro Shop and that a security officer showed him video surveillance showing the defendant entering the store on April 24, 2003, purchasing ammunition, leading a group of people out to the parking lot, and getting into a Cadillac. The defendant admitted to Officer Mattila that he purchased ammunition from the Bass Pro Shop on April 24, 2003. Harper, Hayes, Robinson, Kimmins, and Vickers all testified that they had seen the defendant with a 9-millimeter gun either the night of the shooting or on other occasions.

¶ 59 Harper testified that he accompanied the defendant and two other men to the Bass Pro Shop on April 24, 2003, so that the defendant could buy bullets for himself and Harper. He stated that, later that night, he went to the Time Out Lounge with the defendant and a group of people. The defendant brought a 9-millimeter automatic gun. Harper testified that while hanging around the parking lot, the defendant told him he was going to steal the television from the victims' car and "merk" them. He stated that he, the defendant, and Randle walked up to the car and that the defendant shot the victims. Harper took the television from the car.

¶ 60 Perry testified that he saw the shooting. He saw three men at the victims' car and saw

the shooter fire a 9-millimeter gun. He witnessed one of the men, not the shooter, take something from the car. When shown a photographic lineup, he was able to identify the defendant as the shooter. He did not know any of the parties involved.

¶ 61 Hayes testified that he went to the Bass Pro Shop and the Time Out Lounge with the defendant. He saw the defendant shoot the victims and saw Harper take something from the car.

¶ 62 Numerous witnesses testified that the defendant said he shot the victims. Nedra Smith testified that, the day after the shooting, the defendant told her he killed two men the night before. Robinson testified that he went to the Time Out Lounge with the defendant and a group of people. After the shooting, the defendant jumped in the car with a gun in his hand and said, "I hit the mother fucker up." Jerome Kimmins testified that he was at home when the group returned from the Time Out Lounge and that the defendant told him he shot two people. Patrick Pipes was also at the Arlington building when the group returned from the Time Out Lounge and he heard the defendant say, "I killed two niggers for a TV." Dustin West testified that while fighting with the defendant in the Madison County jail, the defendant threatened to kill him "like he said he killed two people."

¶ 63 Vickers testified that he was a part of the group of people who went to the Time Out Lounge. Just before the shooting, the defendant told him to get off the lot and to take Williams with him. As he started to leave, he heard gunshots. Once back at the Arlington building, he heard the details of the shooting. He told the defendant that a television was not "worth someone dying over." The defendant told him that it was not about the television but that it was done to send a message that no one messes with him or his partners. He also threatened to kill Vickers or anyone else if they reported him to the police. Harper, Robinson, and Pipes also stated that they heard the defendant threaten to kill anyone who reported him to the police.

¶ 64 While in jail, the defendant wrote a letter to the superintendent of the jail, stating: "I am in here in a double murder case that happened at the club Time Out in Alton. I would like to make a confession." When Officer Mattila went to the jail and asked the defendant if he shot the victims, he stated, "I know what you want me to do[;] I'm not going to tell on myself[;] you and I know that I did it."

¶ 65 Given the evidence, the defendant received a fair trial, and the jury verdict is worthy of confidence. Thus, the defendant failed to prove that he was prejudiced by his counsel's alleged errors.

¶ 66 CONCLUSION

¶ 67 For the foregoing reasons, the judgment of the circuit court of Madison County is affirmed.

¶ 68 Affirmed.