

NOTICE

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

2022 IL App (4th) 200379-U

NO. 4-20-0379

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 29, 2022

Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
JESSE W. TATMAN,)	No. 17CF602
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices DeArmond and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding defendant had not established any error with respect to the trial court's rejection of his claim of ineffective assistance of trial counsel or its denial of his amended motion for a new trial.

¶ 2 Following a jury trial, defendant, Jesse W. Tatman, was found guilty of aggravated domestic battery and domestic battery and sentenced to nine years' imprisonment. Defendant appeals, arguing the trial court erroneously denied his amended motion for a new trial where he showed his trial counsel provided ineffective assistance by failing to investigate two witnesses and present their testimony at his trial. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Charges

¶ 5 In May 2017, the State charged defendant with the aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2016)) and domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2016)) of his former girlfriend, Jennifer Faure. Thereafter, the Champaign County Public Defender's Office was appointed to represent defendant, and an attorney employed therein was assigned as defendant's counsel.

¶ 6 B. Jury Trial

¶ 7 On July 10 and 11, 2017, the trial court conducted a jury trial.

¶ 8 1. *Opening Statements*

¶ 9 In its opening statement, the State asserted the evidence would show defendant choked Faure and then later hit her in the face, both incidents occurring while Faure was driving a vehicle in which defendant was a passenger. The State contended it would be asking the jury at the conclusion of the trial to find defendant guilty of aggravated domestic battery for the choking incident and domestic battery for the hitting incident.

¶ 10 The defense, in response, initially encouraged the jury to "pay attention to things that don't make sense, inconsistencies." The defense asserted the evidence would show the charges against defendant were the result of a "sloppy investigation" where the "police could have done more [but] didn't." The defense contended the only reasonable conclusion the jury would be able to reach at the conclusion of the trial is the State had not proven defendant laid a hand on Faure.

¶ 11 2. *Faure's Testimony*

¶ 12 Faure testified, around 5 p.m. on May 5, 2017, she met up with defendant, her former boyfriend, after he got off work. She did so because defendant had indicated he wanted to discuss their relationship, which had recently ended. Faure and defendant had dated about "a year[,] off and on."

¶ 13 Faure picked defendant up in her vehicle and then went for drinks and dinner in Urbana. Eventually, they drove to St. Joseph, Illinois, to spend time with one of defendant's friends.

¶ 14 On the way to St. Joseph, defendant became agitated and started yelling because Faure stated she would not allow him to spend the night with her. Upon arriving at defendant's friend's house, defendant became "combative" and did not want to exit Faure's vehicle. Faure exited her vehicle and sought assistance from defendant's friend to get defendant out of her vehicle. Faure testified, "And, once his friend had seen what was going on, he didn't want anything [to] do with it and he walked back in the house."

¶ 15 Because it was late at night, and the home they were at belonged to defendant's friend's mother, and defendant was yelling, Faure got back into her vehicle with defendant. She then began to back her vehicle out of the driveway and told defendant she was taking him to his mother's home in St. Joseph, at which point defendant "became enraged" and "started to choke" Faure. Faure explained defendant, using one hand, "grabbed my Adam's apple and squeezed extremely hard," causing Faure to "gasp for air." Faure was not able to breathe or talk. Faure believed she "blacked out" because when she "came to," defendant was controlling the vehicle with his hand on the steering wheel. At that point, Faure, who was "terrified," obtained control of the vehicle and drove to a gas station. While at the gas station, Faure "scream[ed]" at defendant to get out of her vehicle. Defendant refused and told Faure to take him to his brother's home in Champaign. Faure eventually complied and proceeded towards Champaign.

¶ 16 While driving on the interstate toward Champaign, defendant looked at Faure and asked her if she "was ready to die" and if she "got right with God." Faure, believing she was "going to die," drove slowly in hopes a police officer would initiate a traffic stop. She also spoke with

defendant about his children in hopes it would deter him from doing anything. Defendant responded that his children were not her “business.” Faure begged defendant not to hurt her.

¶ 17 Faure eventually exited the interstate and went towards her home in Urbana. At that time, Faure resided with an individual named “Steven Hendricks,” who she described as a “[f]amily friend” of defendant. Upon proceeding towards her home, defendant “jerked” the steering wheel. Faure, in response, told defendant she would stop the vehicle. At that point, defendant agreed to go to Faure’s home. Faure told defendant she was going to call the police when she got home.

¶ 18 When nearing her home, defendant told Faure that he had “two holes dug waiting for [her] and Steve.” Faure again told defendant she was going to call the police. Defendant then “elbowed” or “punched” her in the mouth, shifted her vehicle into neutral, pulled the keys out of the ignition, exited the vehicle, and left on foot with the keys.

¶ 19 Faure, who was blocks away from her home, began to push her vehicle. A woman passing by in a vehicle as well as a group of “three boys and a girl” in another vehicle stopped to help her push her vehicle to her home. At that point, Faure noticed her throat was “starting to swell up.”

¶ 20 Once Faure arrived at her house, she went inside. Faure testified, “Steve asked me what happened because I had blood on my pants and my mouth and my neck was, like I said, swollen. I had bruising. I said I’m calling the police.” Faure then walked back outside and called the police. Police officers eventually arrived, and she reported what had occurred.

¶ 21 The next afternoon, defendant called Faure and told her that he was sorry and asked if they could speak. Although she was not comfortable with speaking to defendant, Faure believed she needed to do so to get the keys to her vehicle. She agreed to meet with defendant down the

street from her home. Faure had Hendricks and Hendricks's grandson watch as she met with defendant.

¶ 22 When asked about the injuries she sustained as a result of defendant's actions, Faure testified, "I had finger bruises around my neck, on my arms. My lip was busted open. I couldn't breathe pretty much off and on throughout the night." Faure acknowledged a police officer who met her at the house shortly after the incidents took photographs of her injuries.

¶ 23 On cross-examination, Faure testified she "had one beverage" when asked if she had been "drinking" prior to the alleged incidents. Faure was asked if she told a sheriff's deputy that defendant's friend in St. Joseph saw defendant hit her, to which she stated, "I don't recall." Faure testified she did not tell the deputy that a neighbor helped her push her vehicle. Faure acknowledged telling the deputy that defendant had punched her windshield. Faure acknowledged not seeking assistance from people present inside the gas station. Faure identified defendant's friend in St. Joseph as "Timothy Fiscus."

¶ 24 On redirect examination, Faure testified she did not recall when defendant hit her windshield. She explained she did not get out of her vehicle at the gas station because she was "terrified," she wanted to go home, and she did not want defendant to get in trouble because she loved him. She further explained the people who helped her push her vehicle were driving in her neighborhood, but she did not know where they lived.

¶ 25 *3. Brad Hardcastle's Testimony and 911 Call*

¶ 26 The jury was presented with a stipulation concerning testimony of Brad Hardcastle, a Champaign County 911 operator, and a recording of a 911 call made by Faure. Faure placed the call at 1:11 a.m. on May 6, 2017. During the call, Faure, who seemed to be crying and coughing at times, reported defendant had "choked" her, "punched" her in the face, and said he was going

to kill her. Faure also reported defendant had taken her keys to her vehicle and left, which required her to have someone help her push her vehicle.

¶ 27 4. *Jason Moore's Testimony, Photographs, and Audio and Video Recording*

¶ 28 Sheriff's Deputy Jason Moore testified, at around 1:15 a.m. on May 6, 2017, he responded to a reported domestic battery. He spoke with Faure, who was upset and crying. Faure reported she had been in a verbal altercation with her ex-boyfriend that turned physical inside her vehicle and included him grabbing her by the neck and striking her face. Deputy Moore testified Faure was "clearing her throat" and "coughing quite a bit" when she was explaining what had occurred. Deputy Moore observed Faure to have "a swollen and bloody lip," "a bruise on the inside of one of her arms," "redness to her neck," and "a couple drops of blood on her pants." Deputy Moore took photographs of Faure's injuries, which were admitted into evidence and published to the jury. The photographs appear to show a red mark on the right side of Faure's neck, bruising and swelling on her bottom lip, and bruising on the inside of her right bicep. When speaking with Faure, Deputy Moore was wearing an activated body camera. An audio and video recording from that camera was admitted into evidence and published to the jury. During the recording, Faure reported, amongst other things, defendant worked for "Wells and Wells," and she met defendant for drinks earlier that night.

¶ 29 On cross-examination, Deputy Moore acknowledged Faure told him defendant punched her windshield and hit her in front of his friend, "Tim Fiscus." With respect to Fiscus, Deputy Moore testified neither he nor anyone else from the sheriff's department interviewed Fiscus. Deputy Moore also acknowledged Faure told him someone helped her push her vehicle as opposed to two different groups of people and she had not mentioned having "blacked out."

¶ 30 On redirect examination, Deputy Moore testified Fiscus would not have witnessed the choking incident based on the timeline provided by Faure.

¶ 31 *5. Carey Schalber's Testimony*

¶ 32 The jury was presented with a stipulation concerning the agreed testimony of Sheriff's Deputy Carey Schalber. Deputy Schalber arrested defendant for aggravated domestic battery on May 8, 2017. Deputy Schalber noted defendant appeared shocked and said he had no idea what Deputy Schalber was talking about. Deputy Schalber interviewed defendant. During the interview, defendant stated (1) he was at work until midnight on May 5, 2017, or 1 a.m. on May 6, 2017, and then went home; (2) he had not seen Faure on May 5 or 6, 2017; and (3) the allegations against him were false. Deputy Schalber did not observe any injuries or marks on defendant's hands.

¶ 33 *6. Closing Arguments*

¶ 34 In closing argument, the State, as it contended it would do in its opening statement, asked the jury to find defendant guilty of aggravated domestic battery for the initial choking incident and guilty of domestic battery for the subsequent hitting incident. Conversely, the defense contended the State had not met its burden of proving defendant laid a hand on Faure. The defense asserted Faure's account was not credible. In support, the defense highlighted multiple inconsistencies in Faure's statements, the calm demeanor of Faure when giving her account to Deputy Moore, the fact Faure did not seek help while at the gas station, the absence of distinct injuries in the photographs, the absence of any injuries to defendant's hands, and defendant's shock after he was arrested. The defense also asserted it "was a sloppy investigation from the start." In support of its argument, the defense highlighted the failure by law enforcement to interview Fiscus even though Faure had made a statement indicating Fiscus was with defendant and Faure and saw

defendant hit Faure, as well as its failure to confirm if defendant was working at the time of the alleged incidents.

¶ 35

7. Jury's Findings

¶ 36

Following its deliberations, the jury found defendant guilty of both the aggravated domestic battery and domestic battery of Faure.

¶ 37

C. Posttrial Proceedings

¶ 38

Defendant, through appointed counsel, filed a timely motion for a new trial. Thereafter, private counsel entered an appearance on behalf of defendant, and the appointment of the public defender was vacated. Following several continuances, defendant, through private counsel, filed an amended motion for a new trial, adding claims of ineffective assistance of trial counsel. Relevant here, defendant alleged his trial counsel provided ineffective assistance by failing to present testimony from several witnesses who he identified to counsel, including, amongst others, Timothy Fiscus, Steven Hendricks, and Monica Slade. At a hearing, the trial court declined to address defendant's claims of ineffective assistance, finding they could be raised in a postconviction petition. The court then proceeded to sentencing, where it sentenced defendant to nine years' imprisonment. Defendant appealed.

¶ 39

D. Initial Appellate Proceedings

¶ 40

In March 2020, this court agreed with defendant's argument that the trial court erred when it declined to consider his posttrial claims of ineffective assistance of trial counsel. *People v. Tatman*, 2020 IL App (4th) 180209-U, ¶ 19. As a result, we remanded the matter for further proceedings. *Id.* ¶ 20.

¶ 41

E. Remand Proceedings

¶ 42 In August 2020, the trial court held a hearing on defendant's amended motion for a new trial. Defendant appeared with private counsel. Defendant and the State presented evidence concerning defendant's posttrial claims of ineffective assistance of trial counsel. The following is gleaned from the evidence presented as is relevant to this appeal.

¶ 43 Defendant testified he was taken into custody on May 8, 2017, and then remained in custody through the date of his trial. While in pretrial custody, defendant spoke with counsel by telephone but, despite his requests, never met with him in person at the jail. During one of the phone calls, counsel asked defendant for witnesses. Defendant provided counsel with the names of several witnesses, including Timothy Fiscus, Steven Hendricks, and Monica Slade. Defendant also told counsel he had photographs on his cellphone for counsel. Defendant testified the photographs showed Faure having a swollen and bruised lip prior to the alleged incidents involving defendant.

¶ 44 Stephen Hendricks testified defendant and Faure resided with him for a three-month period in 2017. Hendricks became aware of a physical altercation between Faure and defendant after Faure told him defendant "had beat her up" the day before. Hendricks testified Faure told him that she and defendant "got into an argument" and defendant "grabbed the steering wheel or something." Hendricks also testified "neighbors" helped Faure push her vehicle into his driveway after "[s]he had ran out of gas." Hendricks did not see any injuries to Faure's face when speaking with her. When asked if Faure ever changed her story about what had happened, Hendricks testified, "Well, she—yeah, probably didn't [indicating], you know, a word or two, I don't know, I mean, it's been a while back." After having his recollection refreshed with a statement he wrote in April 2018, Hendricks testified Faure stated defendant "would choke her and beat her up." Hendricks also testified Faure told him, after the police had left, that defendant never touched her

and she said otherwise because she was mad. Hendricks testified he was never contacted by anyone on defendant's behalf until April 2018. Throughout his examination, Hendricks repeatedly volunteered that he did not believe Faure and he did not believe the physical altercation occurred.

¶ 45 Timothy Fiscus testified he was friends with defendant and Faure in May 2017. Fiscus became aware of a physical altercation between Faure and defendant from a police officer. He gave a statement to the officer that Faure and defendant were at his house for about 20 to 30 minutes and, during that time, he did not see defendant hit Faure. Fiscus provided the officer with his contact information. Fiscus testified he was never contacted by anyone on defendant's behalf between May and July 2017. Fiscus testified, had he been contacted, he would have been able to testify.

¶ 46 George Vargas testified he was defendant's appointed trial counsel in this case. Vargas explained 2017 was "kind of a blur" because he had a full felony case load, as well as all cases involving Spanish-speaking clients. Vargas recalled defendant's case was an expedited one involving an incident alleged to have occurred when only defendant and Faure were present. Vargas recalled receiving police reports but had no recollection if the reports identified Fiscus or Hendricks as potential witnesses. Vargas obtained from the public defender's office case notes detailing interactions he had with defendant, which were admitted into evidence. According to his notes, Vargas spoke with defendant by telephone on May 26, June 27, July 7, July 10, and July 12, 2017. On May 26, 2017, Vargas spoke with defendant about the case and asked him for the names and telephone numbers of any "alibi witnesses." Defendant provided names but no numbers. The names were not written on the case notes Vargas obtained; however, Vargas indicated the names may be contained elsewhere in the case file in the public defender's office. On July 7, 2017, defendant told Vargas to call "Monica Slade." Vargas spoke with Slade and determined any

testimony from her would be against defendant's interests. Vargas testified he had no recollection of any names provided by defendant other than Slade. Vargas did not recall if defendant ever asked him to meet in person at the jail.

¶ 47 Based upon the evidence presented, the defense argued, in part, trial counsel provided ineffective assistance by failing to investigate Fiscus and Hendricks and then present their testimony at defendant's trial. The State disagreed.

¶ 48 The trial court, after considering the evidence and arguments presented, as well as the trial transcripts, rejected defendant's claims of ineffective assistance of trial counsel and denied his amended motion for a new trial. As to trial counsel's alleged failure to investigate Fiscus and Hendricks and present their testimony at trial, the court stated, in relevant part, as follows:

“The State presented the call to 911, and wherein the victim reported to the call center what occurred. The deputy that responded to the victim, that was Deputy Moore. The victim testified, she said he choked her, wasn't sure how she got her lip split, but when the deputy got to her at about 1:15 in the morning, he said, ‘At first before she calmed down she was clearing her throat a lot and seemed to be coughing quite a bit, and just being generally agitated.’

‘What if any injuries could you observe on her?’ And the deputy's response was, ‘She had a swollen and bloody lip. She had bruises on the inside of one of her arms. She had a couple of drops of blood on her pants, that I recall, and she also had some redness to her neck.’

‘And what did she tell you had happened to cause those injuries?’ And then the deputy described what the victim said to her. And then the deputy had photos that were shown to the jury of the victim’s injuries.

The two witnesses called today, we’ll have to judge their credibility. The first gentleman, I’m not sure he understood anything that was going on, other than he never laid a hand on her, never laid a hand on her. And then Mr. Fiscus saying, and the other gentlemen saying that she subsequently recanted what she said to the police.

I believe given all that’s presented, and given the fact that the court recalls this case, the victim is a slight person. The jury had an opportunity to view her, had an opportunity to view the injuries that she received. She said the defendant did it, and the defendant’s claiming, I guess, that it was someone else that inflicted these injuries, or she was never injured, and made this all up herself.

Mr. Vargas’s cross-examination of the victim was appropriate. He brought out inconsistencies in her testimony, and he asked the jury to consider those inconsistencies, and basically indicated that the victim was not being truthful in her testimony.

Given everything that’s been presented, I don’t believe that Mr. Vargas’s testimony—Mr. Vargas’s representation fell below the *Strickland* requirement. If—let’s assume he could have done a

better—had a better effort in contacting witnesses, given what the jury saw, given what the court saw as far as this victim testifying, the injuries she received, the manner in which she reported it immediately to 911, and the deputy’s testimony, especially that she kept clearing her throat and she had red marks around her throat. She said he choked her, and the deputy’s testimony confirmed that.

I’m going to deny the motion.”

¶ 49 This appeal followed.

¶ 50 II. ANALYSIS

¶ 51 On appeal, defendant argues the trial court erroneously denied his amended motion for a new trial where he showed his trial counsel provided ineffective assistance by failing to investigate Fiscus and Hendricks and present their testimony at his trial. The State disagrees.

¶ 52 A criminal defendant has a constitutional right to the effective assistance of counsel. U.S. Const., amend. VI. Claims of ineffective assistance of counsel are governed by the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Albanese*, 104 Ill. 2d 504, 526-27, 473 N.E.2d 1246, 1255-56 (1984) (adopting *Strickland*). To succeed on a claim of ineffective assistance of counsel, a defendant must show (1) counsel’s performance fell below an objective standard of reasonableness and (2) the deficient performance resulted in prejudice. *Strickland*, 466 U.S. at 687.

¶ 53 To satisfy the deficiency prong of *Strickland*, a defendant must demonstrate counsel’s performance was so “inadequate ‘that counsel was not functioning as the “counsel” guaranteed by the sixth amendment.’ ” *People v. Dupree*, 2018 IL 122307, ¶ 44, 124 N.E.3d 908 (quoting *People v. Evans*, 186 Ill. 2d 83, 93, 708 N.E.2d 1158, 1163 (1999)). To satisfy the

prejudice prong of *Strickland*, a defendant must show there is “a ‘reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’ ” *People v. Domagala*, 2013 IL 113688, ¶ 36, 987 N.E.2d 767 (quoting *Strickland*, 466 U.S. at 694).

¶ 54 The “failure to satisfy any one of the [*Strickland*] prongs precludes a finding of ineffectiveness.” *People v. Simpson*, 2015 IL 116512, ¶ 35, 25 N.E.3d 601.

¶ 55 In this case, the trial court, after a hearing where evidence and arguments were presented, rejected defendant’s claim that his trial counsel provided ineffective assistance by failing to investigate Fiscus and Hendricks and present their testimony at his trial because he had not satisfied the prejudice prong of *Strickland*. For the reasons that follow, we agree with the trial court’s assessment. See *People v. Haynes*, 192 Ill. 2d 437, 473, 737 N.E.2d 169, 189 (2000) (“[I]f [an] ineffective assistance claim can be disposed of on the ground that the defendant did not suffer prejudice, a court need not determine whether counsel’s performance was constitutionally deficient.”).

¶ 56 First, even if trial counsel’s failure to investigate Fiscus was unreasonable, the information Fiscus would have provided, as gleaned from his testimony at the hearing on remand, would not have necessarily been brought to the jury’s attention. Had counsel been aware Fiscus was with defendant and Faure for a short period on the evening of May 5, 2017, and had not seen defendant strike Faure during that time, counsel could still have reasonably chosen to not call Fiscus as a witness and instead focus on law enforcement’s failure to interview Fiscus. Doing so would avoid counsel being in the position of having to explain or discredit Deputy Schalber’s testimony, testimony to which counsel agreed to stipulate, that defendant stated he was not with Faure on May 5, 2017. Furthermore, even if counsel’s failure to present Fiscus’s testimony at trial was somehow unreasonable, we are not convinced there is a reasonable probability the

introduction of his testimony would have altered the outcome of the trial. While the jury received evidence that Faure made a statement asserting defendant hit her in the presence of Fiscus, Faure testified she did not recall making such a statement, and the State prosecuted defendant for incidents occurring outside Fiscus's presence. Fiscus's testimony, testimony about an uncharged incident, would have been cumulative for purposes of showing why Faure should not be believed and would have conflicted with the statement defendant allegedly gave to Deputy Schalber that he was not with Faure on May 5, 2017.

¶ 57 Second, even if trial counsel's failure to investigate Hendricks was unreasonable, it is not clear the information Hendricks would have provided, as gleaned from his testimony at the hearing on remand, would have necessarily been brought to the jury's attention. Unlike Fiscus, Hendricks never testified he would have been able to testify at defendant's trial had he been asked to do so. Furthermore, even if counsel's failure to present Hendricks's testimony at trial was somehow unreasonable, we are not convinced there is a reasonable probability that the introduction of his testimony would have altered the outcome of the trial. As defendant acknowledges on appeal, the trial court evaluated the nature and quality of Hendricks's testimony and found it would be accorded minimal weight. Defendant does not dispute the court's evaluation and, therefore, we will accept it. The court further considered Hendricks's testimony in light of the other evidence presented. As the court indicated, the alleged recantation by Faure does not explain Faure's injuries, which could be seen in the photographs and were testified about by Faure and Deputy Moore. While defendant, on appeal, attempts to explain the injury to Faure's mouth by citing his testimony that he had photographs showing Faure had the injury prior to the alleged altercations, the referenced photographs were never introduced into evidence, nor would they explain Faure's other injuries. The alleged recantation also does not explain the physical response by Faure, her

coughing, shortly after the reported choking incident, which could be heard in the 911 recording and the recording taken from Deputy Moore's body camera and was testified about by Faure and Deputy Moore.

¶ 58 In considering the trial court's assessment, we have also reviewed *Workman v. Tate*, 957 F.2d 1339 (6th Cir. 1992), a case relied heavily upon by defendant in support of his position on appeal. We find *Workman* to be factually distinguishable. In *Workman*, trial counsel was found to be ineffective for failing to investigate and present testimony of two witnesses who were present when the defendant committed the charged offenses. *Id.* at 1341, 1345-46. Unlike *Workman*, neither Fiscus nor Hendricks were present when defendant committed the charged offenses—the choking incident in St. Joseph and the hitting incident in Urbana. We have also reviewed and found the other cases briefly addressed by defendant to be factually distinguishable. See *People v. Coleman*, 267 Ill. App. 3d 895, 899, 642 N.E.2d 821, 825 (1994) (finding trial counsel ineffective for failing to conduct any pretrial investigation); *People v. Johnson*, 2012 IL App (1st) 091730, ¶¶ 45-48, 993 N.E.2d 1 (finding the evidence was closely balanced for purposes of plain-error review where the case hinged on eyewitness testimony presented by the State in opposition to the alibi witnesses presented by the defendant); *People v. Vera*, 277 Ill. App. 3d 130, 140, 660 N.E.2d 9, 17 (1995) (finding trial counsel ineffective for failing to impeach a witness on critical points); *People v. King*, 316 Ill. App. 3d 901, 919, 738 N.E.2d 556, 570 (2000) (finding trial counsel ineffective for failing to call an available alibi witness who would have bolstered an otherwise uncorroborated defense); and *People v. Garza*, 180 Ill. App. 3d 263, 269-270, 535 N.E.2d 968, 971-72 (1989) (finding trial counsel ineffective for a multitude of errors).

¶ 59 Because we agree with the trial court's assessment defendant had not satisfied the prejudice prong of *Strickland* as it relates to his claim that his trial counsel provided ineffective

assistance by failing to investigate Fiscus and Hendricks and present their testimony at his trial, we conclude defendant has not established any error with respect to the court's rejection of his claim of ineffective assistance of trial counsel. Similarly, we also conclude, absent any other argument, defendant has not established any error with respect to the trial court's denial of his amended motion for a new trial.

¶ 60

III. CONCLUSION

¶ 61

We affirm the trial court's judgment.

¶ 62

Affirmed.