MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Josiah Swinney
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Courtney Staton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Xavier Heckstall,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

June 30, 2022

Court of Appeals Case No. 22A-PC-119

Appeal from the Marion Superior Court

The Honorable Sheila A. Carlisle, Judge
The Honorable Stanley E. Kroh, Magistrate

Trial Court Cause No. 49D29-2002-PC-8162

Bradford, Chief Judge.

Case Summary

[1] In 2017, Xavier Heckstall was convicted of two counts of Level 1 felony rape, Level 3 felony kidnapping, Level 6 felony intimidation, Level 6 felony criminal recklessness, Level 6 felony pointing a firearm, and Level 6 felony strangulation. He was sentenced to a fifty-year term. We affirmed Heckstall's convictions on March 15, 2018. On February 24, 2020, Heckstall filed a petition seeking post-conviction relief ("PCR"), arguing that he had received ineffective assistance of trial counsel. Following a hearing, the post-conviction court denied Heckstall's PCR petition. We affirm.

Facts and Procedural History

[2] Our memorandum decision in Heckstall's direct appeal, which was handed down on March 15, 2018, instructs us on the underlying facts and procedural history leading to this post-conviction appeal:

> Heckstall, T.C., and T.C.'s three children lived together in a three-bedroom apartment in Indianapolis. On July 26, 2016, Heckstall and T.C. began arguing. At some point, Heckstall took T.C. to an apartment next door, which belonged to Heckstall's cousin. The couple continued arguing. Heckstall slapped T.C. and grabbed her by the throat, slammed her against the wall, and squeezed her throat until she could not breathe. He then went to the kitchen to retrieve a knife. When he returned to T.C., he held the knife against her body and acted like he was going to stab her in the stomach. Heckstall proceeded to put his hand up T.C.'s dress and touch her vagina over her underwear, put his fingers inside her vagina, and force[d] her to perform and receive oral sex and sexual intercourse.

Afterwards, Heckstall and T.C. returned to their apartment. T.C. wanted to leave and started to pack, but Heckstall became angry, went to the closet, and got a gun. He held the gun to her head and her back while he made her go back to his cousin's apartment. Eventually, Heckstall calmed down and the two returned to their apartment. One of T.C.'s children called the police.

Crime scene specialist Andrea Pierce investigated the crime scene. She went to Heckstall's cousin's apartment, where she found a knife in the kitchen and a firearm in the furnace closet. The firearm had a round in the chamber and bullets in the magazine.

On July 29, 2016, the State charged Heckstall with seven felonies. Heckstall's jury trial took place on July 13–14, 2017. At the beginning of the trial, Heckstall asked for a continuance to review a crime lab packet that he had received from the State at approximately 4:50 p.m. on July 12, the day before trial. The prosecutor explained that although she had requested the lab packet about a week before the trial, a crime lab employee had overlooked her request, so the prosecutor did not receive it until around noon on July 12. The prosecutor was preparing witnesses at that time, and said that as soon as that preparation was complete, she "went straight on over to [defense counsel]'s office so that [defense counsel] could redepose" T.C. Tr. Vol. II p. 5. Another deposition of T.C. took place for about one and one-half hours.

The prosecutor then stated that she had gone through the new lab packet and that it contained no new information, but instead, it was an extension of a crime lab report that Pierce had prepared and that had been provided to the defense earlier in the case. The prosecutor stated that the new lab packet contained crime scene diagrams and measurements, but that the State would not be introducing those documents into evidence at trial. The

> prosecutor acknowledged that the discovery was late, but noted that she received it late, too.
>
> The trial court noted that the new lab packet included a laboratory examination report, laboratory notes, and a chain of custody report. It also included a compact disc that contained the full crime lab report that had already been discovered. Defense counsel asked for twenty-four hours to evaluate the new packet so that she would not be ineffective on behalf of Heckstall. The trial court ordered a recess, during which Heckstall had the opportunity to examine the packet, including the compact disc.
>
> Following the recess, Heckstall stated that reviewing the lab packet was useful and that it included information that was in his favor and "particularly interesting, particularly about where things were found." *Id.* at 13. The trial court noted that Pierce's initial lab report and another lab report had been discovered in August 2016. The prosecutor stated that Pierce's initial lab report detailed the location of where the knife and gun were recovered. The trial court then denied Heckstall's motion for a continuance and asked the State to make Pierce available for the defense to talk to before Pierce testified. The prosecutor replied that Pierce would be present that afternoon.
>
> The case proceeded to trial, and the jury found Heckstall guilty as charged. On August 25, 2017, the trial court imposed an aggregate sentence of fifty years.

Heckstall v. State, 49A04-1709-CR-2158 * 1–2 (Ind. Ct. App. March 15, 2018).

[3] On February 24, 2020, Heckstall filed a petition seeking PCR, arguing that he had received ineffective assistance of trial counsel. Specifically, Heckstall asserted that his trial counsel had failed to conduct a complete investigation, had failed to effectively cross-examine the State's witnesses, and had failed to

call certain witnesses, who Heckstall believed "could have testified to matters that exculpate[d] Heckstall and/or would [have] impeach[ed] the credibility of the State's material witnesses against Heckstall." Appellant's App. Vol. II p. 13. Following an evidentiary hearing, the post-conviction court denied Heckstall's PCR petition.

Discussion and Decision

[4] Heckstall contends that the post-conviction court erred in denying his PCR petition. "Post-conviction procedures do not afford the petitioner with a super-appeal." *Williams v. State*, 706 N.E.2d 149, 153 (Ind. 1999). "Instead, they create a narrow remedy for subsequent collateral challenges to convictions, challenges which must be based on grounds enumerated in the post-conviction rules." *Id*. "A petitioner who has been denied post-conviction relief faces a rigorous standard of review." *Dewitt v. State*, 755 N.E.2d 167, 169 (Ind. 2001).

[5] Post-conviction proceedings are civil in nature. *Stevens v. State*, 770 N.E.2d 739, 745 (Ind. 2002). Therefore, in order to prevail, a petitioner must establish his claims by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5); *Stevens*, 770 N.E.2d at 745. When appealing from the denial of a PCR petition, a petitioner must convince this court that the evidence, taken as a whole, "leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court." *Stevens*, 770 N.E.2d at 745. "In other words, the [petitioner] must convince this Court that there is *no* way within the law that the court below could have reached the decision it did." *Id*. (emphasis in original). Thus,

"[i]t is only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion, that its decision will be disturbed as contrary to law." *Godby v. State*, 809 N.E.2d 480, 482 (Ind. Ct. App. 2004), *trans. denied*. The post-conviction court is the sole judge of the weight of the evidence and the credibility of the witnesses. *Fisher v. State*, 810 N.E.2d 674, 679 (Ind. 2004).

[6] In challenging the denial of his PCR petition, Heckstall argues that the trial court erred in determining that he did not suffer ineffective assistance of trial counsel. "The right to effective counsel is rooted in the Sixth Amendment to the United States Constitution." *Taylor v. State*, 840 N.E.2d 324, 331 (Ind. 2006). "'The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results.'" *Id*. (quoting *Strickland v. Washington*, 466 U.S. 668, 685 (1984)). "'The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.'" *Id*. (quoting *Strickland*, 466 U.S. at 686).

[7] A successful claim for ineffective assistance of counsel must satisfy two components. *Reed v. State*, 866 N.E.2d 767, 769 (Ind. 2007). Under the first prong, the petitioner must establish that counsel's performance was deficient by demonstrating that counsel's representation "fell below an objective standard of reasonableness, committing errors so serious that the defendant did not have the 'counsel' guaranteed by the Sixth Amendment." *Id*. (internal quotation

omitted). "We recognize that even the finest, most experienced criminal defense attorneys may not agree on the ideal strategy or most effective way to represent a client," and therefore, under this prong, we will assume that counsel performed adequately and defer to counsel's strategic and tactical decisions. *Smith v. State*, 765 N.E.2d 578, 585 (Ind. 2002). "Isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective." *Id*.

[8] Under the second prong, the petitioner must show that the deficient performance resulted in prejudice. *Reed*, 866 N.E.2d at 769. A petitioner may show prejudice by demonstrating that there is "a reasonable probability (*i.e.* a probability sufficient to undermine confidence in the outcome) that, but for counsel's errors, the result of the proceeding would have been different." *Id*. (emphasis added, internal quotation omitted). A petitioner's failure to satisfy either prong will cause the ineffective assistance of counsel claim to fail. *See Williams*, 706 N.E.2d at 154. Stated differently, "[a]lthough the two parts of the *Strickland* test are separate inquires, a claim may be disposed of on either prong." *Grinstead v. State*, 845 N.E.2d 1027, 1031 (Ind. 2006) (citing *Williams*, 706 N.E.2d at 154).

[9] At the conclusion of the evidentiary hearing, the post-conviction court made the following factual findings:

> 6. The record shows that Heckstall was initially represented by appointed counsel Kendal Gulbrandsen for part of the pretrial period. Private counsel Ginny Maxwell represented Heckstall for

the remainder of the pretrial period as well as trial and sentencing.

7. Ms. Maxwell has practiced law exclusively in the area of criminal defense since 2000. She clerked for the Court of Appeals for a few years and was able to do so because of her efforts in law school which resulted in the release of a defendant from prison 40 years early. Following her clerkship, Ms. Maxwell has practiced as a defense attorney solely in the area of criminal law. She estimates having tried 15 or 20 jury trials prior to representing Heckstall, and she had handled other major felony sex crimes and murder cases as well. She met with Heckstall 10 or 12 times prior to trial and listened to everything he said. Ms. Maxwell ultimately made decisions regarding trial strategy that she thought were in her client's best interests. Ms. Maxwell testified that she has good recall of Heckstall's trial.

Ms. Maxwell relayed that Heckstall told her about a variety of potential witnesses, some of them different than the ones that he brought up during this hearing. There was discussion of a pizza driver who Ms. Maxwell was not able to find because her client did not have a description of him or even a company who he worked for. Ms. Maxwell does not recall a neighbor Erin, but one of her concerns was there was competing testimony of the victim's terrified children who had escaped the apartment during the incident, and she did not want to re-emphasize their testimony because she did not have a solid foundation, so strategically she did not feel that calling a neighbor would be an effective way to go. Ms. Maxwell was not made aware of a maintenance man named Alex. Ms. Maxwell says she communicated with a lady named Adrian who was a support for Heckstall at the time, but she does not believe that she ever met Kim[berly] Heckstall.

Ms. Maxwell does not remember any conversations with Heckstall regarding cell phone records. She added that lack of resources would have been a difficulty at that point, and that she

had accepted that Heckstall was not going to pay her for trial and the court was not going to let her withdraw but she was not in a position to front expenses at Heckstall's request.

Ms. Maxwell testified that the financial situation did not affect the zealousness of her representation of Heckstall at trial.

Ms. Maxwell testified that there was no support to challenge the time line [sic] on cross-examination based upon the victim's testimony at trial.

Ms. Maxwell had been notified by a supervising deputy prosecutor Katie Melnick, after the trial had concluded, that there had been an issue with a juror knowing a forensic scientist who had testified at trial, through church, and that the State was exploring it, so Ms. Maxwell notified Heckstall and advised he may want to follow up on it as a PCR issue. Ms. Maxwell never heard anything about any of them assembling in deputy prosecutor Rachel Jefferson's office until Heckstall's PCR testimony during this evidentiary hearing.

Ms. Maxwell confirmed that she had moved for a continuance because of the information that she was provided by the State at 5:00 the evening before trial, and she wanted a chance to explore it, but that continuance was denied.

Ms. Maxwell added that she preserved a potentially good appellate issue regarding an unfortunate, distasteful jail phone call by Heckstall the first night of trial to Adrian which showed that Heckstall was less than a gentleman. There was a hearing in which she objected to the call as purely prejudicial, but it was allowed as State's evidence anyway.

8. Petitioner Heckstall's post-conviction testimony included that: trial counsel did not call three defense witnesses (a lady named Erin who was outside with he and T.C., the maintenance man Alex who was talking to Erin and they were 3 to 5 feet away

from Heckstall, and his ex-wife Kimberly who pulled up 10 minutes later to talk to Heckstall while T.C. was there); that the witnesses would have put them outside at the exact time that T.C. said she was being attacked; he asked Ms. Maxwell to pull cell phone records because T.C. alleged that Heckstall was talking to and texting somebody but Heckstall denies making calls or texts at that time; he asked Ms. Maxwell to challenge time lines [sic] but Ms. Maxwell had T.C. on the stand for 6 minutes and did not ask T.C. about this; that "this girl" was beat up allegedly and "this girl" was raped, and they made it seem cut and dried but it was not like that; the sequence of events was that he left and came back at certain times and he has texts and phone calls that say that which Ms. Maxwell did not bring up; he asked Ms. Maxwell to request a mistrial when the prosecutor relayed to the court that one of the juror's and a State's witness knew each other and they were in the prosecutor's office together an hour after the trial; Ms. Maxwell was not paid completely and was forced to go to trial and they were having issues at trial because of the fees; Heckstall wanted the jury to hear all of the evidence, but instead it was like they only heard one side.

On cross-examination, Heckstall acknowledged that: he and Ms. Maxwell were able to communicate; he reads and writes the English language; and he was not under the influence of any alcohol, drugs, or medications during his meetings with Ms. Maxwell.

9. Kimberly Heckstall's post-conviction testimony included the following: petitioner Heckstall is her ex-husband; she has known him since 2007; she was aware of his arrest; when asked to describe her interaction with him on "the date in question," she testified that at around 3:45 p.m. to 3:50 p.m., she went over after work to pick up a bike she had bought for her son's birthday which was in Heckstall's garage; she and Heckstall were separated at the time; when she arrived, Heckstall was outside talking to his current girlfriend; that Heckstall knew Ms. Heckstall was coming, so he got in the car with her and they

> drove around to his garage, got the bike, put it in the car, talked for a few minutes, and then she drove him back to the front of the building where he had been standing when she arrived; when asked if any attorney contacted her to get her testimony, Ms. Heckstall answered "no"; when asked if she would have been willing to testify, Ms. Heckstall answered "yes." On cross-examination, Ms. Heckstall testified that she did not contact the police to provide the information to which she testified during this PCR hearing.
>
> 10. The evidence is for the State and against the Petitioner.

Appellant's App. Vol. II pp. 55–58.

I. Failure to Investigate/Call Potential Witnesses

[10] In challenging the denial of his PCR petition, Heckstall argues that his convictions "should be reversed because [trial counsel] failed to provide [him] adequate pretrial investigation and preparation." Appellant's Br. p. 13. Specifically, Heckstall asserts that "[b]ecause [trial counsel] did not pursue defense witnesses or have a reasonable plan or response to combat the State's timeline, her performance fell below an objective standard of reasonableness that ultimately prejudiced" Heckstall. Appellant's Br. p. 13.

[11] "When deciding a claim of ineffective assistance of counsel for failure to investigate, we apply a great deal of deference to counsel's judgments." *Boesch v. State*, 778 N.E.2d 1276, 1283 (Ind. 2002). In *Strickland*, the United States Supreme Court held that

> strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.

466 U.S. at 690–91. Further, "[a] decision regarding what witnesses to call is a matter of trial strategy which an appellate court will not second-guess." *Brown v. State*, 691 N.E.2d 438, 447 (Ind. 1998); *see also Wrinkles v. State*, 749 N.E.2d 1179, 1200–01 (Ind. 2001); *Johnson v. State*, 832 N.E.2d 985, 1003 (Ind. Ct. App. 2005).

[12] The post-conviction court's factual findings demonstrate that Heckstall's trial counsel conducted an adequate pretrial investigation and took steps necessary to prepare for trial. The post-conviction record indicates that trial counsel met with Heckstall ten to twelve times prior to trial, during which meetings she and Heckstall discussed the case and their trial strategy. She listened to Heckstall's suggestions on how she should proceed before making her own decisions regarding the trial strategy that she thought was in Heckstall's best interests. The post-conviction record further indicates that trial counsel was familiar with the State's evidence, deposed the State's witnesses, and even requested a continuance after the State handed over certain belatedly-received reports on

the eve of trial. Trial counsel admitted that she did not request certain phone records, as Heckstall did not have the financial resources necessary to do so. The record reveals that trial counsel took the investigatory steps she deemed necessary, keeping in mind the financial recourses available to Heckstall.

[13] Further, while Heckstall asserts that there were additional witnesses that would have bolstered his defense and that his trial counsel should have taken additional steps to combat the State's timeline for his actions, trial counsel's testimony indicated that she had made various strategic and tactical decisions regarding what witnesses to call and how to challenge the State's evidence. Trial counsel testified at the evidentiary hearing that Heckstall had told her about various potential witnesses, including a neighbor named Erin. However, trial counsel provided strategic reasons for not having called Erin as a witness. Trial counsel further testified that she had not been made aware prior to trial of two of the potential witnesses, *i.e.*, a maintenance man named Alex and Heckstall's ex-wife Kimberly, whom Heckstall now claims she should have called. Trial counsel also testified that the evidence had not supported the timeline challenges suggested to her by Heckstall and that monetary restraints made it that she "wasn't in a position to front [Heckstall's] expenses at his request, so he didn't have the resources for the things he was asking for." PCR Tr. p. 21.

[14] Trial counsel provided explanations for why she made various strategic and tactical decisions regarding what witnesses to call at trial and manner in which she chose to combat the State's evidence. Trial counsel's actions are not

deficient merely because another attorney might have made different strategic and tactical decisions. Based on our review of the PCR record, we agree with the State that Heckstall "has failed to show that [trial counsel's] investigation was incomplete or unreasonable, or that her strategic decisions regarding potential witnesses constituted deficient performance." Appellee's Br. p. 8. As such, we cannot say that the post-conviction court erred in finding that trial counsel did not provide deficient performance in this regard.

[15] Furthermore, even if one could say that trial counsel's performance was deficient for failing to call the witnesses mentioned by Heckstall or completing what Heckstall would consider to be a more thorough investigation, Heckstall has failed to prove that he suffered prejudice. With regard to the potential witnesses, Heckstall did not provide any post-conviction testimony or affidavits indicating what Alex or Erin's testimony would have been. The Indiana Supreme Court has held that a petitioner is required to do so when claiming that his trial counsel was ineffective for failing to call witnesses at trial. *See Lowery v. State*, 640 N.E.2d 1031, 1047 (Ind. 1994) ("When ineffective assistance of counsel is alleged and premised on the attorney's failure to present witnesses, it is incumbent upon the petitioner to offer evidence as to who the witnesses were and what their testimony would have been."); *see also Fugate v. State*, 608 N.E.2d 1370, 1373 (Ind. 1993) (providing that a petitioner failed to establish that his counsel was ineffective for failing to subpoena a potential witness because petitioner failed to provide an affidavit showing the substance of the potential witness's testimony and noting that without such an affidavit,

courts have no basis upon which to judge counsel's performance). As for Kimberly Heckstall, the testimony presented merely indicated that she would have testified that when she arrived at Heckstall's apartment, Heckstall was outside talking to his girlfriend. Kimberly did not make any statements relating to T.C.'s demeanor or indicate that she would have testified to T.C.'s demeanor if she had been called as a witness at trial. We cannot say that the post-conviction court erred in determining that it did "not find the post-conviction testimony of Kimberly Heckstall to be significant or that it would have created a reasonable probability of a more favorable outcome at trial, particularly in light of her relationship to Heckstall and the strength of the State's case." Appellant's App. Vol. II p. 61.

[16] With regard to the allegedly inadequate investigation, we note that Heckstall did not present the phone records to the post-conviction court, leaving the post-conviction court with no basis, besides Heckstall's self-serving claims, to conclude that the records would have created a reasonable probability of a more favorable outcome at trial. In addition, while the phone records could have potentially been used to discredit T.C.'s testimony regarding the timeline for Heckstall's attacks, the record reveals that trial counsel did take various steps to attempt to discredit T.C.'s account of what happened on the day in question. Heckstall has failed to show how the method of attempting to discredit T.C. seemingly preferred by Heckstall, *i.e.*, a challenge to the timeline using phone records, would have been any more effective than the methods employed by trial counsel. As the Indiana Supreme Court has stated, "an unsuccessful

defense strategy does not always indicate that the strategy was a poor one, nor does it indicate ineffectiveness of counsel" and we "will not speculate about more advantageous strategies which would have been employed by trial counsel." *Fugate*, 608 N.E.2d at 1373.

II. Failure to Adequately Cross-Examine the State's Witnesses

[17] Heckstall also argues that post-conviction court erred in determining that his trial counsel did not provide ineffective assistance by failing to adequately cross-examine the State's witnesses, namely T.C. and T.C.'s daughter, M.W. "It is well settled that the nature and extent of cross-examination is a matter of strategy delegated to trial counsel." *Waldon v. State*, 684 N.E.2d 206, 208 (Ind. Ct. App. 1997) (citing *Osborne v. State*, 481 N.E.2d 376, 380 (Ind. 1985); *Robles v. State*, 612 N.E.2d 196, 198 (Ind. Ct. App. 1993)); *see also Kubsch v. State*, 934 N.E.2d 1138, 1150–51 (Ind. 2010).

[18] The post-conviction court's conclusions relating to trial counsel's cross-examination of the State's witnesses are as follows:

> Contrary to Heckstall's disingenuous post-conviction testimony that Ms. Maxwell's cross-examination of T.C. lasted 6 minutes, the record at [sic] shows that trial counsel conducted a lengthy, vigorous, meaningful, and strategically-sound cross-examination of T.C. *See* T.R. 96–136. The apparent strategies for the questioning included: showing how in love T.C. was with Heckstall and that she had a motive to be jealous and furious with Heckstall, having just learned that he was preparing an apartment for another woman, *see* T.R. 97–107; showing that

> Heckstall cared about T.C. because he was upset about how T.C.'s dad was treating her and thought her dad was taking advantage of her, *see* T.R. 111–13; bringing out that T.C.'s description of the sexual encounter of the incident in her pretrial statement to trial counsel Gulbrandsen omitted numerous details which added in her trial testimony, *see* 117–26.
>
> Regarding the areas of cross-examination which petitioner argues should have been explored, Ms. Maxwell's post-conviction testimony shows that that there was no support to challenge the time line [sic] on cross-examination based upon the victim's testimony at trial. There is no post-conviction evidence to show otherwise. In addition, Ms. Maxwell does not remember any conversations with Heckstall regarding cell phone records, and petitioner produced no cell phone records as post-conviction evidence to show that cross-examination about such records would have created a reasonable probability of a more favorable outcome at trial.
>
> Further, Ms. Maxwell's closing argument artfully wove the information elicited in the cross-examination of T.C., as well her statements to police and the other State's evidence to show why the jury should disbelieve T.C[.]'s testimony and find Heckstall not guilty. There is no deficient performance or prejudice regarding trial counsel's cross-examination of T.C.
>
> Nor has petitioner met his burden of proving that trial counsel's cross-examination of the State's witnesses as a whole failed to subject the State's case to meaningful adversary testing, thus, no cumulative effect. With no showing of deficient performance or that the outcome of the trial would have been more favorable had trial counsel's cross-examinations been conducted differently, Heckstall's claim of trial counsel ineffectiveness fails.

Appellant's App. Vol. II pp. 63–64.

[19] As for T.C., Heckstall asserts that "[b]ecause the cross-examination [of T.C.] focused on T.C.'s poor decision making for entering into the relationship instead of questions undermining the allegations the trial lost its character as a confrontation between adversaries." Appellant's Br. p. 16 (internal quotation omitted). However, review of trial counsel's cross-examination of T.C. reveals that while trial counsel did attempt to discredit T.C. by asking questions aimed at showing her to be unreliable and questioning the wisdom of entering into the relationship with Heckstall in the first place, trial counsel also asked T.C. questions aimed at discrediting her allegations against Heckstall, pointing out inconsistent statements that T.C. had made about the rape. Trial counsel also questioned T.C. about a potential motive for making false claims against Heckstall. As for M.W., Heckstall claims that trial counsel "needed to further press M.W. about the source of her knowledge about what had happened." Appellant's Br. p. 16. The trial record reveals that trial counsel explored whether M.W. would have reasons to lie, examining whether she was happier before moving to Indiana and whether she liked and was comfortable around Heckstall.

[20] The record reveals that trial counsel questioned both T.C. and M.W. about potential motives to lie and attempted to discredit T.C. Contrary to Heckstall's suggestions, the trial record does not suggest that trial counsel was unprepared or failed to adequately cross-examine either T.C. or M.W. The Indiana Supreme Court has held that "the method of impeaching witnesses is a tactical decision and a matter of trial strategy that does not amount to ineffective

assistance." *Kubsch*, 934 N.E.2d at 1151. Like the post-conviction court, we conclude that Heckstall has failed to prove that trial counsel provided deficient performance in cross-examining the State's witnesses. Heckstall has also failed to prove that he was prejudiced by trial counsel's tactical and strategic decisions. As such, we cannot say that the post-conviction court erred in determining that Heckstall failed to prove that his trial counsel provided ineffective assistance in cross-examining the State's witnesses.

[21] The judgment of the post-conviction court is affirmed.

Najam, J., and Bailey, J., concur.