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2019 IL App (3d) 180527-U

Order filed July 23, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois.
Plaintiff-Appellee,)	
v.)	Appeal No. 3-18-0527
)	Circuit No. 07-CF-475
ROBERT L. BOMAR, JR.,)	Honorable
Defendant-Appellant.)	Richard A. Zimmer, Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Schmidt and Justice McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err by denying defendant's amended postconviction petition following a third-stage evidentiary hearing.
- ¶ 2 Following a jury trial, defendant, Robert L. Bomar, Jr., was found guilty of attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(2) (West 2006)), aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2006)), and aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2006)) in regard to an incident that occurred on May 26, 2007, during which defendant shot the victim, DeAndrew Abbott. Defendant was sentenced to 40 years of

imprisonment for attempted murder, which was to be served consecutively to two concurrent sentences of 30-years of imprisonment for aggravated battery with a firearm and aggravated discharge of a firearm. On direct appeal, this court affirmed defendant's convictions. *People v. Bomar*, 2010 IL App (3d) 080985-UB, ¶ 4. Defendant filed a *pro se* postconviction petition, which was subsequently amended by his postconviction counsel. After a third-stage evidentiary hearing, the trial court denied defendant's amended postconviction petition. Defendant appeals, arguing that this court should reverse the trial court's order denying the petition and remand for a new trial because his right to due process was violated as the result of the State suborning perjured testimony to secure his convictions. We affirm the trial court's denial of defendant's amended postconviction petition.

¶ 3

I. BACKGROUND

¶ 4

A. Defendant's Jury Trial

¶ 5

Defendant's jury trial began on December 3, 2007. Prior to trial, the State filed a supplemental disclosure to defendant indicating that the State might call Corey Martin to testify at defendant's trial, Martin was in jail with defendant, and defendant had told Martin that defendant had shot and intended to kill Abbott because Abbott had gotten into an argument with defendant's girlfriend. The disclosure also indicated that the State had not made "any deal or promises" to Martin.

¶ 6

1. DeAndrew Abbott

¶ 7

At trial, Abbott testified that he was 22 years old. According to Abbott, a few days before defendant shot him, Abbott had gotten into a verbal argument with his co-worker, Courtney Burbridge, who was defendant's girlfriend. During the argument, Courtney became hostile toward Abbott and told Abbott that she was going to call defendant. After Abbott and Courtney

stopped arguing, Abbott reported the incident to his supervisor, Mary McGuffy. During his lunch break later that day, Abbott was unexpectedly confronted by defendant in a McDonald's parking lot. Defendant asked Abbott if he had any problems with defendant's girlfriend. Abbott asked defendant, "who is your girlfriend?" Defendant and Abbott "exchanged words." Abbott told defendant that his argument with Courtney had been settled at work. Defendant told Abbott that he was there to make sure there was not going to be any problems between Abbott and his girlfriend. Upon returning from lunch, Abbott reported the incident at McDonald's to his other supervisor, Jeff Donkers.

¶ 8 Abbott additionally testified that two days later, on May 26, 2007, he went to a party for the grandmother of his coworker, James Wilmington. Abbott attended the party after work with James and Lavonte Cooper. Defendant and Courtney were also at the party. Abbott ate some food and drank two beers, but he did not want to stay because defendant was there. Abbott was waiting for Lavonte to finish eating so they could leave, when defendant said to Abbott, "we might as well squash this now today." Defendant was referring to having a physical fist fight with Abbott.

¶ 9 Abbott further testified that he and defendant left the party, along with Lavonte, James, and James's brother, Mike Reese. The men walked a few blocks, when defendant turned around, pulled out a gun, and said, "[w]hat's your bitch ass say so now?" Defendant shot Abbott in the stomach, and Abbott fell to the ground. Abbott was on his back, when defendant said, "[n]ow I'm going to kill you right now." Defendant pulled the trigger of the gun, but the gun just "clicked." Defendant struck Abbott in the ear with the gun. Abbott pushed the gun away, burning his hand on the barrel, and then got up and started running back to the party with the assistance of Lavonte. Abbott was limping "really, really bad." Defendant fired his gun down the block at

Abbott and Lavonte. Abbott sat in a chair when he got back to the backyard of the home of where the party was located. He heard that James was in the house yelling, “[h]e got shot.” When James came out of the house, Lavonte and James helped Abbott to his car. Abbott saw Courtney and heard her talking loudly on her cell phone. Courtney got into her vehicle, which was parked in front of Abbott’s car, and drove away. Lavonte drove Abbott and James to the hospital in Abbott’s car.

¶ 10 At the hospital, Abbott initially reported that he had been shot as he was walking to his car but he had not seen the shooter. Later at the hospital, Abbott told Officer Gregory Whitcomb that defendant had shot him and described how the incident had transpired. Abbott testified at trial that he had initially denied knowing the shooter’s identity because he was scared that defendant would come back and try to “finish the job” and because Abbott did not want to “get involved” in any case. When Abbott was asked at trial what “made [him] decide to tell [Whitcomb] the whole story,” Abbott testified:

“Because [Whitcomb] assured me that I wasn’t in trouble. I was mostly—I was scared that I was going to be in trouble and that he was going to try to come back and finish the job. But when he told me that I wasn’t going to be in trouble and explained to me the severity of the situation, that’s when I told the truth.”

¶ 11 2. Lavonte Cooper

¶ 12 Lavonte’s testimony at trial was similar to Abbott’s testimony, with Lavonte testifying that he went to the party with Abbott and James. They left the party with defendant and Mike Reese because Abbott and defendant were going to have a fist fight. They were walking down the street together when defendant “just turned and shot [Abbott] in the stomach.” Lavonte testified that he saw defendant holding the gun. Abbott fell to the ground. Defendant then

pointed the gun at Abbott's head and said he was going to kill Abbott. Defendant fired the gun, and Abbott swatted the gun away as it was fired. Lavonte heard the gun make two clicking sounds. Lavonte helped Abbott run back to the party. Defendant fired one more shot as they were running. Once Lavonte and Abbott returned to the house, Abbott sat on a chair outside. Lavonte then drove Abbot, in Abbott's car, to the hospital. James went with them. Lavonte identified defendant in court as the person who shot Abbott. When Whitcomb showed Lovonte a photo lineup with defendant included in the lineup on the day of the shooting, Lavonte told Whitcomb that he had not gotten a good look at defendant. Lavonte testified that he was able to positively identify defendant in court, "[j]ust by how he looked."

¶ 13 3. Daphne Reese

¶ 14 Daphne Reese testified that she is like a mother to James and he calls her mom. On May 26, 2007, Daphne had a party at her home for her mother (the grandmother of James). James came to the party with other people, but Daphne did not know their names. Daphne testified that defendant came to the party with his girlfriend, Courtney. Defendant had not been invited to the party but, to be polite, Daphne allowed him to stay.

¶ 15 At some point during the party, James said goodbye to Daphne, hugged and kissed her, and then left the party. Daphne testified that "James and the two boys" came back to the party, with one of the boys having been shot. Daphne called 9-1-1 and mentioned defendant's name during the call, but she did not recall exactly what she had said.

¶ 16 4. James Wilmington

¶ 17 James testified that he worked with Abbott and Courtney. A few days before the shooting, James had gone to McDonald's with Abbott for lunch and defendant was in the parking lot. Defendant had "some words" with Abbott over Courtney, but "not angry words." James

testified that he, Abbott, and Lavonte attended a party for his grandmother on the evening of May 26, 2007, at the home of his mother, Daphne Reese. (James testified that Daphne is like a mother to him but he is not her biological son). Defendant and Courtney were already at the party when James arrived. There was tension between defendant and James because defendant had asked James to move but James “really wasn’t trying to move because [he] felt like [he] was there first.” James’s family members asked James to take care of the tension so there would be no trouble at the party, so defendant and James “talked it out.” James testified that he did not leave during the party with Abbott and Lavonte. After Abbott and Lavonte returned to the party following the shooting, James went to the hospital with them. James testified that at no time during the party did he say goodbye to and hug his mother (Daphne). At no point was James aware that a fist fight was going to take place.

¶ 18

5. Shelly Toure

¶ 19

Shelly Toure testified that she is Courtney’s mother and she worked at the same company as Courtney, James, and Abbott. Shelly testified that she attended the party for Daphne’s mother. Daphne’s mother is Courtney’s great aunt and Daphne is Courtney’s second cousin. The party was a family event, with both local and out-of-state family members in attendance. Shelly testified that Courtney arrived at the party with defendant in Courtney’s car. Shelly left the party a few minutes past 9 p.m., at which time she saw Courtney in a Jeep, getting ready to leave the party with some cousins to go to Iowa City. Shelly also saw defendant walking down the driveway toward the Jeep but she did not see if he got into the Jeep. When Shelly left the party there had not been any indication that a shooting had taken place. A few hours later, at 12:45 a.m., Shelly received two phone calls—one call from “Nita” and one call from Daphne—informing her about the shooting. Shelly called Courtney, and Courtney came over to Shelly’s

home about 20 to 30 minutes later. Shelly testified that defendant was in a “good mood” during the party and she had not gotten any type of a bad feeling from him during the party.

¶ 20

6. Jeffrey Donkers

¶ 21

Jeffrey Donkers testified that he was a supervisor and manager where Courtney and Abbott were employed. On May 24, 2007, Donkers became aware of the disagreement that had taken place between Abbott and Courtney after Abbott returned from lunch and reported the incident that had occurred in the McDonald’s parking lot. As a result, Donkers spoke with both Abbott and Courtney about the incident. Neither Abbott nor Courtney reported any further disagreements.

¶ 22

7. Officer Gregory Whitcomb

¶ 23

Officer Whitcomb testified that while Abbott was being treated at the hospital, Whitcomb spoke with various witnesses and determined that defendant was the suspected shooter. Whitcomb assembled a photographic lineup that included defendant, from which Abbott identified defendant as the shooter. On May 29, 2007, a few days after the shooting, Whitcomb interviewed Shelly (Courtney’s mother) who indicated that defendant had been “standoffish” and in a bad mood during the party.

¶ 24

Whitcomb testified that defendant was arrested in Coralville, Iowa, on June 20, 2007.

¶ 25

8. Corey Martin

¶ 26

Corey Martin testified that on September 25, 2007, he was arrested regarding four felony drug charges and was being held in the same jail where defendant was being held awaiting trial. Martin testified that he had a 1998 felony drug conviction and that he is a drug addict. The trial court admonished the jury that “the testimony of an addict is to be scrutinized with great caution.” Martin testified that he had not been given “any promises or plea agreements in

exchange for his truthful testimony” and that he was testifying because he “felt like it was the right thing to do.”

¶ 27 In testifying, Martin explained that he and defendant had known each other for over a decade and they were friends. Martin and defendant spoke with one another on more than one occasion while they were in jail in September 2007. They discussed defendant’s pending charges. Defendant told Martin that he shot Abbott “pretty much over his girlfriend” because Abbott and Courtney had gotten into an argument at work and defendant was “very angry” about it. Defendant told Martin he and Abbott were at the same party, defendant tried to “provoke” Abbott, and defendant had his gun with him the “whole time” at the party. Defendant told Martin that he shot Abbott in the stomach, Abbott fell to the ground, and defendant put the gun to Abbott’s head and squeezed the trigger, but the gun did not fire. Defendant told Martin that when he put the gun to Abbott’s head he was “trying to finish the job.” After the shooting, defendant subsequently fled to Iowa City, Iowa.

¶ 28 Martin additionally testified that he did not know how much time of imprisonment he was facing in regard to his four pending felony charges and that it was not his intention to use his testimony at defendant’s trial to facilitate a plea agreement. Martin also testified that he had not entered into any negotiations with the prosecutor. Martin believed that his case was irrelevant to defendant’s case.

¶ 29 On cross-examination, Martin explained that he did not immediately contact the State’s Attorney regarding defendant’s statement to him about the shooting because “[y]ou gotta do it through lawyers.” Martin testified, “[defendant] put me in the middle of something I didn’t want to have anything to do with.”

¶ 30 9. Jury Verdict, Sentence, Direct Appeal

¶ 31 The jury found defendant guilty of attempted first degree murder, aggravated battery with a firearm, and aggravated discharge of a firearm. Defendant was sentenced to an aggregate prison sentence of 70 years of imprisonment (40 years to be served consecutively to two concurrent 30-year terms of imprisonment). Defendant’s convictions were affirmed by this court on direct appeal. *Id.*

¶ 32 B. Postconviction Proceedings

¶ 33 On December 27, 2011, defendant filed a *pro se* postconviction petition, alleging prosecutors forced Martin to testify falsely at defendant’s trial and Martin was now recanting that testimony. In support of his postconviction petition, defendant attached an affidavit executed by Martin on September 17, 2011, and notarized September 20, 2011, which stated:

“I Corey Martin do testify, [to] the facts [sic] that the state’s attorney Margret Osborne and N. Nuez pressured me to testify against my God brother Robert L. Bomar Jr. On this day 9-17-11 I do retracked [sic] my statements against Robert L. Bomar Jr. I really didn’t and don’t know the true facts of the case. Therefore, my testimony is no good. If I have to go to jail for purgery! [sic] So be it!!! I love my family. Nobody is cohercing [sic] now! I want my brother home for these injust [sic] reasons. Corey Martin 9-17-[illegible].”

¶ 34 On November 7, 2013, defendant filed a motion indicating that his postconviction petition had not been ruled upon, which the trial court treated as a postconviction petition and summarily dismissed. On appeal, upon the State’s concession, this court reversed and remanded for second-stage postconviction proceedings because defendant’s *pro se* postconviction petition had not been ruled upon within the statutorily mandated 90-day timeframe. *People v. Bomar*, No. 3-13-0972 (2015) (unpublished minute order).

¶ 35 On August 11, 2017, defendant’s appointed postconviction counsel filed an amended petition. In the amended postconviction petition, defendant argued, among other things, that his due process rights were violated because the prosecution used the perjured testimony of Martin, “a jailhouse snitch,” to secure defendant’s convictions. Defendant argued that Martin must have received a benefit from the State in exchange for his testimony because Martin entered into fully negotiated plea “less than two weeks after [defendant’s] trial” and received a three-year term of imprisonment as the result of “an illegal plea agreement with the State.” Defendant also argued that when Martin’s testimony is viewed in light of Martin’s affidavit and the resolution of Martin’s cases, it is apparent that Martin had been coerced by the State into testifying when he “really didn’t know the true facts of the case.” Defendant claims that his due process rights were violated as the result of the State using Martin’s perjured testimony.

¶ 36 The State filed a motion to dismiss the amended postconviction petition, which the trial court denied. The trial court noted that the determination of whether a recantation is reliable is not made at the motion to dismiss stage of the proceedings where well-plead facts must be taken as true. The trial court also stated, “I’m not doing it piecemeal here, so all issues go forward [to the third-stage evidentiary hearing].”

¶ 37 At the third-stage evidentiary hearing, defendant’s attorney indicated that he had intended to call Martin as a witness at the evidentiary hearing but he was unable to determine Martin’s address and serve Martin. Defendant’s attorney requested a continuance, which the trial court granted. Defendant’s subsequent motion to hire an investigator to locate Martin was granted, but the investigator was unable to locate Martin. Defendant was unable to secure Martin’s presence at the postconviction petition evidentiary hearing. At the evidentiary hearing, defendant’s attorney submitted into evidence both Martin’s affidavit and the State’s disclosure of Martin as a

potential witness prior to trial, with no objection from the State. Defendant's attorney argued that some kind of deal had to have been made with Martin related to his pending charges in exchange for his testimony at defendant's trial because Martin received "a very illegal sentence" just days after testifying at defendant's trial. Defendant's attorney argued that the State's disclosure of Martin as a potential witness indicating no deal had been made with Martin and Martin's testimony that he did not expect to receive a deal from the State were "flat out false" based on the "the circumstantial evidence of not only the timing of [Martin's] plea [one week after defendant's trial] but also the nature of [Martin's] plea agreement." Defendant's attorney also argued that it was not harmless error for Martin to perjure himself because Martin was the only witness to supply defendant's motive for the shooting.

¶ 38 The attorney for the State argued that defendant's contention that there was a plea deal with Martin in exchange for his testimony was "pretty much speculation." The State additionally argued that even if Martin had testified falsely, the testimony was not material to securing defendant's conviction where Martin was not a crucial witness.

¶ 39 In ruling on defendant's postconviction petition, the trial court found that defendant's claim that a plea deal between the State and Martin must have been made was speculative. The trial court also determined that Martin was not a critical witness, so that even if Martin's testimony was perjured, the outcome of the trial would not have changed. The trial court, therefore, found no showing of a substantial constitutional violation with respect to defendant's allegations regarding Martin's alleged perjured testimony. Defendant appealed.

¶ 40

ANALYSIS

¶ 41 On appeal, defendant argues the trial court erred in denying his post-conviction petition following the third-stage evidentiary hearing. Defendant has indicated that he is raising no issue

on appeal regarding the trial court's finding that defendant's argument that Martin must have been given an undisclosed deal of leniency was mere speculation. Rather, on appeal, defendant takes issue with the fact that the trial judge "did not even address Martin's claim that he gave perjured testimony" and that Martin's affidavit was not contradicted by the State. Defendant also argues that the trial court erred in finding that Martin was not an important witness at trial. In response, the State contends that the trial court did not err by denying defendant's postconviction petition.

¶ 42 The Post Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)) provides a means by which a criminal defendant can challenge his or her conviction or sentence based on a violation of constitutional rights. *People v. Pendleton*, 223 Ill. 2d 458, 471 (2006). The purpose of postconviction proceedings is to allow inquiry into constitutional issues involved in the original conviction and sentence that were not, and could not have been, previously adjudicated on direct appeal. *People v. Lucas*, 203 Ill. 2d 410, 417-18 (2002). To be entitled to postconviction relief, the defendant bears the burden of making a substantial showing of a constitutional violation in the proceedings which resulted in the conviction or sentence being challenged. 725 ILCS 5/122-1(a) (West 2016); *Pendleton*, 223 Ill. 2d at 471.

¶ 43 The Act provides for three stages of postconviction proceedings. *Pendleton*, 223 Ill. 2d at 471-72. At the first stage, the trial court must either dismiss the petition if it is frivolous or patently without merit or docket the petition for further consideration. 725 ILCS 5/122-2.1(a)(2), (b) (West 2016); *Pendleton*, 223 Ill. 2d at 472. At the second stage of the proceedings, counsel may be appointed for an indigent defendant. 725 ILCS 5/122-4 (West 2016); *Pendleton*, 223 Ill. 2d at 472. Once the defendant's attorney has made any necessary amendments to the petition, the State "shall answer or move to dismiss" the petition. 725 ILCS 5/122-5 (West 2016); *Pendleton*,

223 Ill. 2d at 472. At the second stage, the allegations in the petition must make a substantial showing that the defendant's constitutional rights have been violated, with all well-pleaded facts that are not positively rebutted by the record taken as true. *Pendleton*, 223 Ill. 2d at 473; *Lucas*, 203 Ill. 2d at 418. At this stage, the circuit court is only concerned with determining whether the petition's allegations sufficiently demonstrate a constitutional violation that would necessitate relief under the Act and the circuit court is foreclosed from engaging in any fact-finding. *People v. Coleman*, 183 Ill. 2d 366, 380 (1998). If the allegations in the petition, as supported by the record or accompanied by affidavits, have made a substantial showing of a violation of constitutional rights, the postconviction proceedings advance to a third-stage evidentiary hearing, wherein the defendant may present evidence in support of the allegations in the petition. 725 ILCS 5/122-6 (West 2016); *Pendleton*, 223 Ill. 2d at 472-73.

¶ 44 At the third-stage evidentiary hearing, the trial court “may receive proof by affidavits, depositions, oral testimony, or other evidence.” 725 ILCS 5/122-6 (West 2016). When a petition has been advanced to a third-stage evidentiary hearing, where fact-finding and credibility determinations are involved, a reviewing court will not reverse a trial court's decision as to whether there has been a substantial showing of a constitutional violation unless that finding is manifestly erroneous. *Pendleton*, 223 Ill. 2d at 473. Manifest error is error that is clearly evident, plain, and indisputable. *People v. Coleman*, 206 Ill. 2d 261, 277 (2002).

¶ 45 The State's knowing use of perjured testimony to obtain a criminal conviction violates due process of law. *Lucas*, 203 Ill. 2d at 422; *People v. Olinger*, 176 Ill. 2d 326, 345 (1997). Where the State's case includes perjured testimony that the State knew, or should have know, to be false, then a strict standard of materiality applies, and a reviewing court must overturn the conviction “if there is any reasonable likelihood that the false testimony could have affected the

judgment of the jury.” *Id.* (quoting *Coleman*, 183 Ill. 2d at 392 (citing *United States v. Agurs*, 427 U.S. 97, 103 (1976))). This strict standard of materiality is equivalent to the harmless error standard and is applicable even if the State did not solicit the false testimony but allowed it to remain uncorrected. *Id.* “[T]his standard is of materiality is the most lenient to the defendant.” *Coleman*, 183 Ill. 2d at 392.

¶ 46 Here, the only evidence that defendant presented at the evidentiary hearing was Martin’s affidavit. The affidavit indicated that Martin did not know the true facts of the case, prosecutors “pressured” him into testifying, and he wished to retract his “statements” against defendant, who Martin referred to in the affidavit as his “brother.” Recantation testimony is regarded as inherently unreliable and a new trial will not be granted on the basis of a recantation absent extraordinary circumstances. *People v. Sanders*, 2016 IL 118123, ¶ 33. Whether Martin’s recantation was to be believed was a credibility determination to be made by the trial court at the third-stage evidentiary hearing. See *id.*, ¶ 42 (credibility is not an issue at the second stage of postconviction proceedings where all well-plead facts must be taken as true). However, the trial court did not make any findings regarding whether Martin had given perjured testimony at trial. Rather, the trial court found that “even if [Martin’s testimony at trial] was perjured,” the outcome of the trial would not have changed.

¶ 47 In this case, we cannot say the trial court’s finding that Martin’s testimony was not material to defendant’s conviction was against the manifest weight of the evidence. Although Martin’s testimony was helpful to the State’s case, it was not “crucial.” See *Lucas*, 203 Ill. 2d at 423-24 (holding that false testimony given in support of the State’s motive theory did not violate defendant’s right to due process where the witness “did not offer direct identification evidence against defendant, did not connect defendant to the murder weapon, and did not provide the only

evidence of motive”). Martin testified that defendant confessed to him when they were jailed together, with defendant telling Martin that he shot Abbott in the stomach, intended to kill Abbott, and did so because he was upset about the argument Abbott had with his girlfriend. However, there was also overwhelming evidence of defendant’s guilt in the form of eyewitness testimony from Lavonte and Abbott. Both Lavonte and Abbott identified defendant as the shooter when giving their testimony under oath. Although both witnesses initially denied knowing the shooter’s identity, soon thereafter Abbott identified defendant as the shooter, choosing his photograph from a photo lineup. Furthermore, the circumstantial evidence presented at defendant’s trial corroborated the testimony of Abbott and Lavonte. With such overwhelming evidence of defendant’s guilt presented at trial, we cannot say that the trial court’s denial of the postconviction petition was against the manifest weight of the evidence. See *Lucas*, 203 Ill. 2d at 422.

¶ 48 In addition, we affirm the denial of the postconviction petition because defendant failed to establish that the State knew that Martin’s testimony was perjured. See *People v. Lee*, 2016 IL App (2d) 150359, ¶ 14 (a reviewing court may affirm the trial court’s decision on any basis in the record because it looks to the judgment of the lower court and not its reasoning). The allegations in defendant’s postconviction petition merely stated, “perjured testimony was used by the State to obtain [defendant’s] conviction” and “the State used the perjured testimony of Corey Martin.” Martin’s supporting affidavit indicated that the State “pressured” him into testifying. Although defendant had argued that Martin must have been lying regarding making a deal with the State, which would have been within the knowledge of the State, the trial court found that those allegations were mere speculation and defendant specifically indicated that he is not challenging that finding on appeal. Defendant made no further attempt to establish that the State

had knowingly used the alleged false testimony of Martin. See *People v. Brown*, 169 Ill. 2d 94, 105-06 (1996) (without alleging the State’s knowingly used false testimony, or that there was some lack of diligence on the part of the State, “there [would be] no involvement by the State in the false testimony to establish a violation of due process”).

¶ 49 Our supreme court has specifically rejected “the position that a constitutional issue is raised despite the failure to claim that the use of false testimony was with the State’s knowledge.” *Id.* at 104-106. Without the State’s knowing involvement regarding perjured testimony, a witness giving false testimony is merely the action of a private individual for which there is no remedy under the due process clause. *Id.* at 106 (noting that defendants who claim their convictions were based upon perjured testimony absent the State’s knowledge of the perjury may seek relief under section 2-1401 of the Code of Civil Procedure (735 ILCS 2-1401 (West 2016)), under which a defendant is not required to establish a constitutional violation); see also *People v. Garcia*, 405 Ill. App. 3d 608, 622-23 (2010) (the prosecution does not knowingly use false testimony where the false testimony involves matters that are only known to the witness and does not involve matters within the personal knowledge of the prosecution). Consequently, defendant failed to meet his burden of making a substantial showing of a constitutional violation. We, therefore, affirm the denial of defendant’s amended postconviction petition.

¶ 50 CONCLUSION

¶ 51 The judgment of the circuit court of Rock Island County is affirmed.

¶ 52 Affirmed.