

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs August 5, 2014

**DEANGELO SEVIER v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Shelby County**  
**No. 06-09190 Lee V. Coffee, Judge**

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**No. W2013-00363-CCA-R3-PC - Filed November 10, 2014**

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The petitioner, Deangelo Sevier, appeals the post-conviction court's denial of his petition for post-conviction relief, arguing he received ineffective assistance of counsel. After review, we affirm the denial of the petition.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

ALAN E. GLENN, J., delivered the opinion of the Court, in which THOMAS T. WOODALL, P.J., and ROGER A. PAGE, J., joined.

R. Todd Mosley (on appeal) and James P. DeRossitt, IV (at hearing), Memphis, Tennessee, for the appellant, Deangelo Sevier.

Herbert H. Slatery, III, Attorney General and Reporter; Deshea Dulany Faughn, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Ann L. Schiller, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**FACTS**

The petitioner was convicted of felony murder and attempted especially aggravated robbery and was sentenced to life imprisonment and ten years, respectively. State v. Deangelo Sevier, No. W2009-00172-CCA-R3-CD, 2010 WL 796948, at \*1 (Tenn. Crim. App. Mar. 9, 2010), perm. app. denied (Tenn. Aug. 24, 2010). This court affirmed the judgment of the trial court on direct appeal, and the Tennessee Supreme Court denied his application for permission to appeal. Id. The underlying facts of the case were recited by this court on direct appeal as follows:

On the morning of May 13, 2006, the Memphis Police Department responded to a report made by an off-duty police officer of a “man down” at 3896 Lamar, the location of the 78 Motel. Upon investigation, police located three men who had been shot. Darryl Smith and Jarrett Robinson were dead and the third, Regie Renfroe, was severely wounded. After an investigation, [the petitioner] was identified as a suspect in the murder of Darryl Smith. At the time of his arrest, [the petitioner] was seventeen years old.

In June of 2006, the Shelby County Juvenile Court conducted a juvenile transfer hearing concerning the allegations against [the petitioner]. After the hearing, [the petitioner] was transferred to criminal court for prosecution as an adult. Subsequently, [the petitioner], along with Tosha Taylor and Lakeysha Hill, were indicted by the Shelby County Grand Jury in November of 2006 for first degree felony murder and attempted especially aggravated robbery[.]

Prior to trial, [the petitioner] filed a motion to dismiss the indictment. In the motion, [the petitioner] alleged that there was no recording preserved of the juvenile transfer hearing. According to [the petitioner], “the hearing was presumably properly recorded, [but] the computer hard drive containing the electronic recording malfunctioned and all information contained thereon was lost.” [The petitioner] asked the trial court to dismiss the indictment and remand the matter to the juvenile court for a new transfer hearing. The trial court denied the motion after a hearing.

Prior to trial [the petitioner] also sought to suppress his statement to police. [The petitioner] argued that his statement was obtained in violation of his constitutional rights, that he was coerced into making the statement, that he was under the influence of drugs at the time the statement was made, and that the statement was “secretly filmed by a mass media production organization without [the petitioner’s] consent. . . .”

The trial court held a hearing on the motion to suppress the statement. At the hearing, Sergeant William Merritt testified that he participated in the investigation of the attempted robbery that resulted in the murder of Darryl Smith and injuries to Regie Renfroe.

Sergeant Merritt informed the trial court that he responded to the crime scene around 9:00 a.m. on the morning of May 13, 2006. Sergeant Merritt met two females, Lakeysha Hill and Tosha Taylor, who were witnesses to the crimes. Concerned that [the petitioner] may have been shot, a family member

of [the petitioner] was also present. Ms. Hill and Ms. Taylor were interviewed and implicated themselves and [the petitioner] in the crimes.

[The petitioner] was arrested several days later. At the time of his arrest, [the petitioner] was seventeen years of age. [The petitioner] was escorted to an interview room at the homicide office and officers waited until [the petitioner]'s mother arrived before beginning the interview. Both [the petitioner] and his mother were offered food and drink, and [the petitioner] was advised of his Miranda rights. The officers explained the advice of rights form to both [the petitioner] and his mother. [The petitioner] informed the officers that he had gone to school through the ninth grade and was able to read and write. In order to confirm this, Officer Merritt asked [the petitioner] to read from the advice form. [The petitioner] confirmed that he could read without difficulty. Both [the petitioner] and his mother signed the form. Sergeant Merritt did not think that [the petitioner] was under the influence of alcohol or drugs at the time of the interview.

The officers told [the petitioner] that they were aware he was at the hotel when the incident occurred. [The petitioner] began by telling the officers that he and Jarrett Robinson went to the hotel together. According to [the petitioner], only Mr. Robinson had a gun. When they entered room "120 something" the men inside attempted to rob [the petitioner] and Mr. Robinson at gunpoint. [The petitioner] stated that shots were fired and he fled the scene when he saw that Mr. Robinson had been shot and killed. The officers told [the petitioner] that they did not believe his story because they had already interviewed Ms. Taylor and Ms. Hill who had implicated [the petitioner] and Mr. Robinson in a plot to rob the two men who were at the hotel. The officers also told [the petitioner] at that time that they had recovered at least two handguns from the scene that were going to be fingerprinted.

Once confronted with these facts, [the petitioner] admitted his involvement in the crimes by telling officers that he and Mr. Robinson went to the hotel to rob the two men. [The petitioner] stated that the women encouraged the men to perpetrate the robbery because the men in the hotel room had drugs and money.

After [the petitioner] admitted his involvement, the officers took a taped statement from [the petitioner]. Sergeant Merritt testified at the suppression hearing that [the petitioner] was not threatened or coerced into giving the statement and did not invoke his right to counsel during the interview.

[The petitioner] testified at the suppression hearing. According to [the petitioner], he signed the advice of rights form even though he did not understand what it said. [The petitioner] claimed that he smoked marijuana immediately before he was arrested. [The petitioner] also stated that marijuana makes him “dumb” and that he has problems understanding things when he is high. [The petitioner] admitted that he did not ask for an attorney during the interview, but claimed that he was unaware that he had the right to ask for an attorney.

At the conclusion of the hearing, the trial court determined that [the petitioner] was able to comprehend his rights and that [the petitioner] had the mental capability to understand the form. Additionally, [the petitioner]’s mother was present and there was no indication that she was incompetent. The trial court found that [the petitioner] was not so impaired by the marijuana that he did not understand his rights and that the police “protected” [the petitioner]’s rights by providing him with the proper warnings prior to the statement. In other words, the trial court determined that the statement was “freely and voluntarily [given] . . . without threats, intimidation, coercion, forces of any kind, in full knowledge of what his rights were. . . .” The trial court denied the motion to suppress.

The case proceeded to trial. At trial, there was testimony from Darryl Smith’s mother, Mary Woods. Mrs. Woods testified that her son lived in Dallas, Texas at the time of his death and had flown to Memphis the weekend of May 13, 2006, to pick up his children for the summer.

Regie Renfroe testified that he was at William Chamberlain’s house on May 13, 2006, with Darryl Smith, Chamberlain’s two roommates, and Mr. Renfroe’s cousin. Mr. Renfroe went to high school with Mr. Smith. The men spent the night playing cards, drinking, smoking marijuana, and gambling.

According to Mr. Renfroe, around 3:30 or 4:00 a.m., a girl named “Jaz”<sup>1</sup> and her friend, “Tosha” Taylor, came in to the house. Mr. Chamberlain opened the garage door so that the girls could come inside the house. Mr. Renfroe was under the impression that Ms. Taylor had been staying with Mr. Chamberlain for about a month. When the girls first came into the house, they walked to the back of the house with Mr. Chamberlain. The entire time they were in the house, Ms. Taylor was on the phone with someone and was

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<sup>1</sup> “Jaz” was later identified as Lakeysha Hill.

looking around and acting like she had never been there before. Mr. Renfroe noticed that the girls had arrived at the house in a Red Jeep Liberty with tinted windows. There were two men inside the vehicle.

After the girls left, Mr. Renfroe asked Mr. Chamberlain what they wanted. He claimed that he had no idea. About an hour later, Ms. Taylor called Mr. Chamberlain and asked him to come and pick her up at the Motel 78 on Lamar. Because Mr. Chamberlain did not have a vehicle, he asked Mr. Renfroe to go pick her up at the hotel. Mr. Renfroe was not interested until Ms. Taylor offered him some gas money. Darryl Smith rode with Mr. Renfroe to the hotel because he needed a ride home.

When they arrived at the hotel, Mr. Renfroe called inside the hotel and asked Ms. Taylor to come outside. Ms. Taylor asked Mr. Renfroe to come inside and wait because she was not ready yet. Mr. Renfroe and Mr. Taylor exited their vehicle and walked to Room 123 and knocked on the door. Ms. Taylor answered the door and told the men to wait for a second. Mr. Smith and Mr. Renfroe stepped inside the room. Mr. Renfroe said that someone else then knocked on the door. When Ms. Taylor answered the door, a girl was standing there. Then, almost immediately, [the petitioner] entered the room shooting a gun and demanding money. Mr. Renfroe was startled and began “tussling” with [the petitioner] while [the petitioner] continued to fire the gun. Mr. Renfroe was shot in the chest and managed to push [the petitioner] aside and run out the door. Mr. Smith was still in the room and was shot and killed.

Mr. Renfroe could still hear shots as he ran out of the room. He managed to make it to the parking lot before collapsing on the ground. Mr. Renfroe remained in the hospital for over a month and underwent several extensive surgeries as a result of the shooting.

Officer Thomas Woods responded to the scene after an off-duty police officer reported that there was a man down at Hotel 78. Officer Woods saw Mr. Renfroe lying on the ground and noted that he had been shot. When he arrived in the room, Officer Woods smelled gunpowder and saw smoke. There was a deceased individual lying in the hallway and another deceased individual lying in the hotel room. The victims were identified as Darryl Smith and Jarrett Robinson.

During the investigation, Sergeant Merritt interviewed Ms. Taylor and Ms. Hill. The information gleaned from their statements led authorities to

develop [the petitioner] as a suspect. The women were also developed as suspects.

[The petitioner] was arrested three days later on May 16, 2006. [The petitioner] was transported to the police department but was not interviewed until his mother arrived because he was a juvenile. In his taped statement, [the petitioner] informed authorities that Ms. Hill and Ms. Taylor wanted him and Jarrett Robinson to rob some men because they were drug dealers and had money. Mr. Robinson gave [the petitioner] a small black nine millimeter gun. Ms. Taylor and Ms. Hill showed [the petitioner] and Mr. Robinson where the men lived. The women went into the house, Mr. Chamberlain's house, and came out after a few minutes. [The petitioner] said that they then dropped the girls off at the truck stop before going to the hotel. When they eventually all got to the hotel, one of the women stayed with them. While they were inside Room 123, a girl named "Moesha"<sup>2</sup> knocked on the door. Then a man hit [the petitioner] and Mr. Robinson shot the man who hit [the petitioner]. [The petitioner] informed the officers that he was standing outside the hotel room in the hallway when Mr. Robinson came out of the room and fell. [The petitioner] claimed that he fired his gun three to five times and was not in the room when Mr. Robinson fired his weapon. [The petitioner] left his gun at the hotel and fled the scene in the Red Jeep Liberty. [The petitioner] went to Mr. Robinson's wife's house.

Sergeant Merritt emphasized in his testimony that [the petitioner] admitted going to the hotel for the purpose of committing a robbery. Further, [the petitioner] admitted that he shot his gun three to five times at the hotel.

[The petitioner] testified at trial. According to [the petitioner], he was seventeen years old at the time of the incident. [The petitioner] was living with Mr. Robinson at the time. Mr. Robinson sold drugs, robbed people, and was a "pimp." Mr. Robinson moved around almost every day, staying with different women. [The petitioner] testified that on May 13, 2006, at around 2:00 a.m., he went to the home of Janice Williams. Mr. Robinson later came to get [the petitioner]. Mr. Robinson took three guns with him, and gave one of the guns, a nine millimeter, to [the petitioner]. The men stopped at several truck stops so that Mr. Robinson could collect money from his prostitutes. The men picked up Ms. Hill and Ms. Taylor, who directed them to Mr. Chamberlain's house. The women went inside. While they were inside, Ms.

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<sup>2</sup> "Moesha" was never located.

Hill called Mr. Robinson on the phone, telling him there were too many men inside the house. Mr. Robinson informed [the petitioner] that they were planning to rob Mr. Renfroe. When the four individuals left the house, they went to the hotel.

[The petitioner] stated at trial that when they arrived at the hotel, the women got out of the car and used money provided by Mr. Robinson to rent a room. The men drove around to the back of the hotel and went into the side entrance. First, Mr. Robinson and [the petitioner] went to Room 107, where Moesha was sitting on the couch. Ms. Hill and Ms. Taylor later came into the room.

Ms. Taylor got a call from Mr. Renfroe, informing her that he was at the hotel. At that point, [the petitioner] claimed that Ms. Taylor went to another room in the hotel. Mr. Robinson told [the petitioner] that the robbery was still on. Ms. Taylor called a few minutes later to tell Mr. Robinson and [the petitioner] that she was ready and that Mr. Renfroe had another man, Darryl Smith, with him. [The petitioner] claims that he stood in the hallway outside Room 123 while Moesha came down and knocked on the door. When the door opened, [the petitioner] admitted that he burst into the room with his pistol drawn. [The petitioner] demanded money from the occupants of the room. Before he knew it, [the petitioner] was hit by someone. [The petitioner] struggled with Mr. Renfroe but denied shooting him or firing his gun. [The petitioner] testified that Mr. Robinson entered the room at that time and shot Mr. Renfroe in the side.

[The petitioner] testified that the original plan was for Mr. Robinson to rob Mr. Renfroe. [The petitioner] claimed that he did not see Mr. Smith in the room and did not see Ms. Taylor in the room after she opened the door. According to [the petitioner], Mr. Robinson shot Mr. Renfroe. After Mr. Renfroe was shot, [the petitioner] saw him run out of the room. Mr. Robinson told [the petitioner] to chase him, so [the petitioner] left the room chasing after Mr. Renfroe. [The petitioner] shot at him and did not know if he hit Mr. Renfroe with any of the shots. [The petitioner] turned around and went back to the room when he ran out of bullets. [The petitioner] did not go inside because when he approached the room, Mr. Robinson stumbled out of the room and fell. [The petitioner] realized at that point that Mr. Robinson had been shot.

At that time, [the petitioner] went back to Room 107 to tell the girls

what had happened. Ms. Hill called 911. [The petitioner] went to Room 123 to get the keys to the vehicle when he realized that Mr. Robinson was dead. [The petitioner] testified that he gave his gun to Ms. Taylor and left in the Jeep.

Id. at \*1-6.

The petitioner filed a timely *pro se* petition for post-conviction relief and, following the appointment of counsel, an amended petition was filed. In his petitions, the petitioner raised, among other things, various allegations of ineffective assistance of counsel. On appeal, the petitioner confines himself to arguing that counsel was ineffective for failing to cross-examine a witness regarding inconsistencies between his testimony at trial and statements made to the police, and failing to obtain a ballistics expert to testify at trial.

The post-conviction court conducted an evidentiary hearing, at which the petitioner testified that, on May 12 or 13, 2006, Jarrett Robinson told him about a plan he had to commit a crime. Robinson told the petitioner that “he had somebody that told him about a robbery to do . . . for some drugs . . . and \$15,000.00.” Robinson informed the petitioner of the plan and began taking steps to put the plan into motion. Robinson and the petitioner drove to a house on Redbirch where Robinson had his prostitutes, Tosha Taylor and Lakeysha Hill, “go in and . . . see what’s going on inside the house.” The petitioner later learned that Regie Renfroe and Darryl Smith, two of the victims, were inside. While Taylor and Hill were inside the house, they talked to Robinson on the phone and told him that there were too many people in the house for the robbery to take place. The petitioner claimed that when he heard there were too many people in the house, he told Robinson that he was not going to commit the robbery.

The petitioner testified that Taylor and Hill came back outside and got in the car where he and Robinson were waiting. After driving around to check on Robinson’s other prostitutes, the group went to Motel 78. The petitioner and Robinson went to Room 107, and Taylor and Hill went to Room 123. Robinson and the women planned the robbery, then Robinson asked the petitioner, “You ready? Let’s do this[.]” The petitioner responded, “All right.” The petitioner waited in the hallway while another woman, Moesha, went to knock on the door of Room 123. After she knocked on the door, the petitioner ran into the room and began “tussling” with Renfroe over the gun the petitioner had in his hand. Robinson came into the room and saw the petitioner and Renfroe struggling over the gun, and he shot Renfroe. Renfroe ran out of the motel room, and the petitioner chased him at Robinson’s direction. The petitioner said that he did not shoot his gun inside the motel room but admitted that he fired several shots at Renfroe as Renfroe fled the room. Once Renfroe got to the lobby, the petitioner turned to go back to the motel room, from where he heard more



gunshots. The petitioner saw Robinson stumble out of the room. Robinson had been shot and died in the hallway. The petitioner had Hill call 911 and left the motel. He was arrested two days later. The petitioner acknowledged that, at trial, he admitted to shooting at Renfroe and intending to participate in the robbery.

Regarding the representation by counsel, the petitioner testified that he worked well with counsel and that “[s]he was a good attorney.” However, he thought that counsel should have cross-examined Renfroe with a statement he gave to the police shortly after the incident, which the petitioner believed to be inconsistent with Renfroe’s testimony at trial. Specifically, Renfroe told the police:

And Mr. Renfro[e] advised the writer that when [Tosha Taylor] opened the door, there was another female, black, at the door and when [Taylor] opened the door, two male, blacks, ran in the room with all -- with armed handguns. And Mr. Renfro[e] advised the writer that a short male, black, dark skinned, early twenties, red polo shirt and blue jeans put a gun to his head and demanded his money. And Mr. Renfro[e] advised the writer that he grabbed the short male, black, by the arm and they tussled briefly over the weapon. Mr. Renfro[e] advised the writer that he broke from the subject, armed with a weapon, and ran from the room. Mr. Renfro[e] advised the writer that as he was running down the hall, the subject fired shots at him; striking him at least one time. Mr. Renfro[e] advised the writer that he continued to run from the hotel and collapsed in the parking lot. Mr. Renfro[e] advised the writer he was standing close . . . to the door and Da[r]ryl was standing behind him, so he did not know what happened to Dar[r]yl.

The petitioner asserted that, at trial, Renfroe testified that the first person to enter the room, which would have been the petitioner, came in shooting. The petitioner claimed that Renfroe’s testimony was different from the statement to police because there was no mention in the statement of the petitioner’s entering the room shooting. The petitioner believed that Renfroe committed perjury at trial and, although admitting that counsel “did an all right job” cross-examining him, thought that counsel “didn’t press the issue[.]” On cross-examination, the petitioner acknowledged that the “statement” Renfroe gave to the police was actually a notation in a supplement in which the officer relayed what Renfroe told him, not an official statement.

In addition, the petitioner thought that counsel should have called a ballistics expert to establish that he did not shoot Renfroe. However, he acknowledged that an expert with the Tennessee Bureau of Investigation (“TBI”) testified at his trial and was cross-examined by counsel. He admitted that the expert testified that one of the shell casings found on the

scene matched his gun. Upon questioning by the court, the petitioner acknowledged that, under Tennessee law, whether he fired a bullet that actually killed someone would not have made a difference because he could have been convicted under the theory of criminal responsibility.

After the hearing, the post-conviction court made extensive oral findings, followed by a written order, denying relief. This appeal followed.

### ANALYSIS

On appeal, the petitioner argues that he received ineffective assistance of counsel because counsel failed to cross-examine a witness regarding inconsistencies between his testimony at trial and statements made to the police, and failed to obtain a ballistics expert to testify at trial.

The post-conviction petitioner bears the burden of proving his allegations by clear and convincing evidence. See Tenn. Code Ann. § 40-30-110(f). When an evidentiary hearing is held in the post-conviction setting, the findings of fact made by the court are conclusive on appeal unless the evidence preponderates against them. See Tidwell v. State, 922 S.W.2d 497, 500 (Tenn. 1996). Where appellate review involves purely factual issues, the appellate court should not reweigh or reevaluate the evidence. See Henley v. State, 960 S.W.2d 572, 578 (Tenn. 1997). However, review of a trial court's application of the law to the facts of the case is *de novo*, with no presumption of correctness. See Ruff v. State, 978 S.W.2d 95, 96 (Tenn. 1998). The issue of ineffective assistance of counsel, which presents mixed questions of fact and law, is reviewed *de novo*, with a presumption of correctness given only to the post-conviction court's findings of fact. See Fields v. State, 40 S.W.3d 450, 458 (Tenn. 2001); Burns v. State, 6 S.W.3d 453, 461 (Tenn. 1999).

To establish a claim of ineffective assistance of counsel, the petitioner has the burden to show both that trial counsel's performance was deficient and that counsel's deficient performance prejudiced the outcome of the proceeding. Strickland v. Washington, 466 U.S. 668, 687(1984); see State v. Taylor, 968 S.W.2d 900, 905 (Tenn. Crim. App. 1997) (noting that same standard for determining ineffective assistance of counsel that is applied in federal cases also applies in Tennessee). The Strickland standard is a two-prong test:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so

serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

466 U.S. at 687.

The deficient performance prong of the test is satisfied by showing that “counsel’s acts or omissions were so serious as to fall below an objective standard of reasonableness under prevailing professional norms.” Goad v. State, 938 S.W.2d 363, 369 (Tenn. 1996) (citing Strickland, 466 U.S. at 688; Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975)). Moreover, the reviewing court must indulge a strong presumption that the conduct of counsel falls within the range of reasonable professional assistance, see Strickland, 466 U.S. at 690, and may not second-guess the tactical and strategic choices made by trial counsel unless those choices were uninformed because of inadequate preparation. See Hellard v. State, 629 S.W.2d 4, 9 (Tenn. 1982). The prejudice prong of the test is satisfied by showing a reasonable probability, i.e., a “probability sufficient to undermine confidence in the outcome,” that “but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Strickland, 466 U.S. at 694.

Courts need not approach the Strickland test in a specific order or even “address both components of the inquiry if the defendant makes an insufficient showing on one.” 466 U.S. at 697; see also Goad, 938 S.W.2d at 370 (stating that “failure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim”).

In denying the petition, the post-conviction court found, with regard to the petitioner’s claim that counsel failed to obtain a ballistics expert for trial to prove that “he didn’t shoot anybody and that the bullets didn’t come from [his] gun[.]” that the petitioner failed to show how such expert would have been beneficial to his defense. The court observed that the petitioner did not produce at the evidentiary hearing a material witness who could have been found by reasonable investigation and who would have testified in the petitioner’s favor if called at trial. In addition, the court noted that because the petitioner was convicted as a party to felony murder, “it is legally irrelevant that the [p]etitioner did not shoot anyone or that bullets were not fired by the [p]etitioner’s weapon.”

With regard to counsel’s cross-examination of Renfroe, the post-conviction court observed that Renfroe had not given a previously sworn or recorded statement; instead, the petitioner’s allegation was based on a verbal statement reflected in a police supplement that was taken from Renfroe while he was hospitalized and in critical condition. The court found that the petitioner “failed to present any proof at the evidentiary hearing that Renfroe gave statements that were inconsistent and likely perjured.” The court found that “[t]he trial transcript, starting at page 658, clearly shows that trial counsel vigorously cross-examined Mr. Renfroe about alleged inconsistent statements.” The court continued in its findings that,

although “[t]rial counsel vigorously attacked and attempted to discredit Renfroe[,] . . . ‘[t]he credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as the trier of fact.’” The court concluded that the “issue is wholly without merit.”

The record supports the post-conviction court’s determinations as to both of the petitioner’s allegations. As to the petitioner’s claim that counsel failed to obtain a ballistics expert for trial, the petitioner did not call an expert witness or present any evidence as to how such expert would have helped him at trial. In addition, as noted by the post-conviction court, the petitioner was convicted under a theory of criminal responsibility as a party to felony murder; thus, “it is legally irrelevant that the [p]etitioner did not shoot anyone or that bullets were not fired by the [p]etitioner’s weapon.” The petitioner is not entitled to relief on this issue.

As to the petitioner’s claim that counsel was ineffective in her cross-examination of Renfroe, the petitioner admits that counsel “did an all right job” in cross-examining him. However, he claims that counsel should have questioned Renfroe about alleged inconsistencies between his testimony at trial and a statement to police. However, the “statement” to which the petitioner refers was actually a notation in a supplement in which an officer relayed what Renfroe told him at the hospital, not an official statement. Moreover, even if the petitioner established deficient performance, he has failed to prove a reasonable probability that the result of the trial would have been different. The petitioner admitted his involvement in the robbery at the motel room during which the victim died. Deangelo Sevier, 2010 WL 796948, at \*2, \*5. He admitted that he burst into the room with his pistol drawn and demanded money from the occupants of the room. Id. at \*5. He admitted that he chased Renfroe from the motel room and shot at him numerous times. Id. Based on the petitioner’s admissions, any alleged failure in the cross-examination of Renfroe was inconsequential. The petitioner is not entitled to relief.

### **CONCLUSION**

Based on the foregoing authorities and reasoning, we conclude that the petitioner has not met his burden of showing that he was denied the effective assistance of counsel. Accordingly, we affirm the denial of the petition for post-conviction relief.

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ALAN E. GLENN, JUDGE