

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs August 19, 2026

**FILED**

08/28/2026

Clerk of the  
Appellate Courts

**ERIK COURTNEY LEHTO v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Knox County**  
**No. 128024 Hector Sanchez, Judge**

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**No. E2025-01526-CCA-R3-PC**

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The Petitioner, Erik Courtney Lehto, appeals the Knox County Criminal Court’s denial of post-conviction relief from his convictions for two counts of rape of a child, one count of aggravated sexual battery, and one count of solicitation of rape of a child. The Petitioner alleges that he received ineffective assistance of counsel based on four asserted grounds: (1) trial counsel failed to ask key credibility-related questions during the Petitioner’s direct examination regarding household tension between him and the minor victim; (2) trial counsel failed to cross-examine the minor victim about other men in her environment who, according to the Petitioner, could have provided alternative explanations or suspects; (3) trial counsel erred by stipulating to evidence describing the Petitioner’s arrest near the U.S.-Mexico border, which suggested flight and implied consciousness of guilt; and (4) the cumulative effect of these alleged deficiencies deprived him of a fair trial.<sup>1</sup> Upon our review, we affirm the judgment of the post-conviction court.

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

CAMILLE R. McMULLEN, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and TOM GREENHOLTZ, JJ., joined.

Dillon E. Zinser, Knoxville, Tennessee, for the appellant, Erik Courtney Lehto.

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Senior Assistant Attorney General; Charme Allen, District Attorney General; and Jordan Murray, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

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<sup>1</sup> We have rephrased the Petitioner’s issues for clarity.

A full recitation of the facts supporting the Petitioner's convictions may be found in this Court's opinion from the Petitioner's direct appeal. State v. Lehto, No. E2022-00848-CCA-R3-CD, 2023 WL 3990585, at \*1 (Tenn. Crim. App. Jun. 14, 2023), perm. app. denied (Tenn. Oct. 13, 2023). As relevant to the issues raised herein, in 2019, the child-victim disclosed sexual abuse to school personnel, which led to the arrest of her father, the Petitioner. He was later released on bond and required to wear a GPS device and remain in Tennessee. The trial court appointed initial counsel, an assistant public defender, to represent the Petitioner at trial. On January 28, 2020, the Petitioner failed to appear for a pre-trial hearing, and his GPS monitor had been disconnected. Attempts to contact him were unsuccessful, and on January 30, 2020, he was arrested at a border patrol checkpoint in Val Verde County, Texas. Initial counsel withdrew from the case on September 22, 2020, citing a conflict of interest because he might be called as a witness regarding the Petitioner's failure to appear. On January 22, 2021, the trial court appointed trial counsel to represent the Petitioner at trial.

The victim, age twelve at the time of trial, testified to multiple incidents of sexual abuse committed by the Petitioner. She identified him as the perpetrator, recalled her forensic interview, and authenticated her drawing of the Petitioner's penis. She also described financial tension between her mother and the Petitioner during this time. Trial counsel also cross-examined the child-victim about her relationship with the Petitioner, and she agreed that the Petitioner was "kind of" strict and "had very clear ideas of what was good and bad."

Sergeant Stoney Gentry, the Petitioner's release supervisor with the Knox County Sheriff's Office, testified that the Petitioner was aware of his bond conditions and that a non-functional GPS monitor would constitute a violation of his release. Sergeant Gentry attempted to contact the Petitioner when he missed his pre-trial hearing and learned that Petitioner's cell phone and vehicle were at home, but the Petitioner was not.

During the second day of trial, the parties entered a stipulation which provided:

1. On or about July 2, 2019, [the Petitioner] was released on bond for Case 115466. As a condition of his release, [the Petitioner] was required to wear a [GPS] device and comply with the requirements of the Knox County Sheriff's Pre-Trial Release Services Department.

2. On or about January 30, 2020, at approximately 22:21 hours, [the Petitioner], after removing his Pre-Trial [GPS] device was arrested near the United States/ Mexican border at the Border Patrol Check Point on Highway 90 West in Val Verde County, Texas.

3. At the time of the arrest[,] [the Petitioner] was the driver and sole occupant of his vehicle, a Dodge Neon. A search of the vehicle by law enforcement officers with the Val Verde Sheriff's Office resulted in the recovery of several items of camping gear and approximately \$1,641 [].

Initial counsel testified that he was notified that the trial set on January 28, 2020, was cancelled and the hearing was rescheduled to January 30. He confirmed that he called the Petitioner to inform him of this change and left him a message. He further confirmed that he did not tell the Petitioner that he was not required to go to his pre-trial meeting, which was still set for January 28.

The Petitioner testified at trial that at the time of the allegations he was unemployed and had a strained relationship with his spouse. The Petitioner stated that once the allegations came forth, he felt "hopeless" and left to get "peace and clarity, maybe find a solution, maybe end it all." He acknowledged that he removed the GPS device, but he clarified that he was en route from Texas to a national park in New Mexico and did not realize he was near the Mexican border when he was arrested. He stated that he did not know about the pre-trial meeting, but he knew that his trial date was cancelled.

On cross-examination, the State asked the Petitioner a series of questions to confirm his place of residence and his family members. The Petitioner testified that they had "frequent men visitors" at their home. When the State pushed back against his testimony, the Petitioner insisted that men visited their home "fairly often." However, the Petitioner agreed that he was unemployed in 2018-2019, the timeframe of the abuse, and therefore at home most days. He acknowledged that during that period he was sometimes alone in the residence with the child-victim, and at other times her brother was present. He further stated that his wife would occasionally be away running errands when he was alone with the children. The Petitioner acknowledged in his testimony that the victim was quite smart and could understand the seriousness of the trial.

On redirect examination, trial counsel asked the Petitioner about the location of the border patrol checkpoint. The Petitioner was shown a map of the U.S. Border Patrol checkpoint in Val Verde County, Texas and stated he recognized it. He acknowledged that the checkpoint appearing north of the border aligned with his understanding that such stations are located inland. More specifically, he agreed that all the border patrol checkpoints were positioned to stop northbound traffic traveling away from Mexico. He further agreed that the map accurately depicted the checkpoint where he was arrested.

Following his convictions, the Petitioner filed a motion for a new trial, which was denied on September 23, 2022. The Petitioner subsequently filed a direct appeal to this Court, arguing that the evidence presented at trial was insufficient to support his

convictions. Lehto, 2023 WL 3990585, at \*1. This Court affirmed the judgments of the trial court on June 14, 2023, id. at \*5, and the Tennessee Supreme Court denied his Rule 11 application on October 13, 2023. Id.

On June 25, 2024, the Petitioner filed a handwritten pro se petition for post-conviction relief alleging that trial counsel was “ineffective for failing to raise issues/evidence at trial.” The post-conviction court appointed counsel on August 22, 2024. On May 9, 2025, the Petitioner filed an amended petition alleging twenty-four grounds for ineffective assistance of counsel.<sup>2</sup> As relevant to this appeal, the Petitioner alleged that trial counsel was ineffective because he (1) failed to ask the Petitioner all the questions that had been discussed during the limited preparation for direct examination, and took no corrective action to recall the Petitioner to remedy this after Petitioner spoke to trial counsel after testifying; (2) failed to cross-examine the minor victim about other men who were around her, depriving the Petitioner of the ability of presenting alternate suspects to the jury; (3) entered a stipulation to evidence describing the Petitioner’s arrest near the U.S.-Mexico border, which suggested flight and implied consciousness of guilt; and (4) the cumulative effect of these deficiencies constituted ineffective assistance of counsel.<sup>3</sup>

At the August 8, 2025 post-conviction hearing, the Petitioner testified that he was a veteran and suffered from multiple sclerosis, which affected his memory. The Petitioner confirmed that trial counsel was appointed to his case before trial and that, prior to trial, he met “four or five times” with trial counsel for “probably 30 minutes to an hour[.]” He reviewed the discovery with trial counsel and discussed testifying and direct examination. The Petitioner affirmatively stated that trial counsel prepared him for direct and cross-examination. However, he clarified that trial counsel did not ask all the questions the Petitioner believed were important. The Petitioner testified that he wanted trial counsel to ask about household rules—specifically restrictions on televisions, video games, and cell phones—that had caused tension between him and his daughter, who was the victim in the case. He stated this testimony would have shown that his daughter harbored negative feelings and bias toward him at the time. The Petitioner further testified that he was dissatisfied that trial counsel did not ask the victim about other male visitors at the house. The Petitioner noted the victim had a “promiscuous” cousin, two brothers and other cousins, and “lots of male subjects around her at the time.” According to the Petitioner,

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<sup>2</sup> In this appeal, the Petitioner narrows his claims to four grounds for relief; therefore, the remaining twenty grounds addressed in his post-conviction petition are waived. See Tenn. R. App. P. 13(b).

<sup>3</sup> The first ground for ineffective assistance of counsel, stated as issue three in the Petitioner’s amended petition, broadly alleged that trial counsel failed to ask the Petitioner on direct examination questions that had been discussed in preparation for trial. Later, at the post-conviction hearing and in his brief to this Court, the Petitioner specifically identified the line questioning as concerning household tension between him and the victim. As previously noted, we have rephrased this ground of relief for clarity.

exploring this area would have provided “alternate[] . . . suspects.” The Petitioner stated that trial counsel was aware of other men being around. Lastly, as to the stipulation, the Petitioner testified that he was not trying to flee the country, and that he was heading north out of Texas toward New Mexico when he was stopped.

Trial counsel testified that he was appointed to represent the Petitioner and clarified that he discussed the Petitioner’s direct and cross-examination testimony, practicing questions and answers. He confirmed that they discussed the sources of tension between the Petitioner and his daughter to give the jury an alternative explanation of why a child may make such allegations, and “that was the best we could come up with was he had been strict about the game system, TV, those kinds of things.” Trial counsel explained that ultimately, he did not ask about the sources of tension. He was “never particularly satisfied with that as an explanation” and reasoned it was “a difficult sell to the jury.” Although trial counsel was aware of other males being in the house prior to trial, trial counsel did not pursue that theory because “this wasn’t an identity case.” Trial counsel explained this case “was not a question of who did it. It was a question of did it happen.” Lastly, trial counsel explained the circumstances surrounding the stipulation to the Petitioner’s arrest in Texas. Trial counsel stated his goal was to limit the jury’s exposure to the implication that the Petitioner had fled. He acknowledged that the proposed stipulation tended to portray the arrest as occurring “at the border,” but he believed cross-examination—including the use of a map—would allow him to clarify that the checkpoint was actually a significant distance inland, thereby mitigating any inference that the Petitioner was attempting to leave the country. Trial counsel recalled that the Petitioner was “pretty far from the border, actually, a significant distance from the border.”

On redirect examination, trial counsel testified that he discussed with the Petitioner the possibility of other males being around the victim. Trial counsel agreed with the Petitioner that the information could help to explain how the victim knew male anatomy and was able to draw a picture of a penis.

On September 25, 2025, the post-conviction court denied relief by written order and reasoned as follows:

Petitioner alleges trial counsel did not adequately assist him in preparing his testimony for his jury trial. The Petitioner makes several assertions all having the same overriding complaint. This Court finds that based on the Petitioner’s own testimony coupled with that of trial counsel, that trial counsel adequately prepared the Petitioner for direct and cross-examination. Petitioner testified that he and his attorney discussed direct examination and cross-examination, and trial counsel testified that they went over the Petitioner’s testimony prior to the trial. The Petitioner has failed to

demonstrate by clear and convincing evidence that trial counsel was deficient, and that the deficient performance prejudiced him.

. . . .

Petitioner again alleges that trial counsel erred by not asking him all the necessary questions they had discussed during the “limited preparation” for direct examination. Having already partially addressed this issue in 1 and 2 above, this Court finds that the Petitioner and trial counsel had prepared prior to trial, which further supports this Court’s belief that the claims in issues 1 and 2 are unfounded. This Court further finds that issues discussed prior to trial may indeed change during a trial for various reasons and there was no error in not raising the issues presented by Petitioner, but more so trial strategy. This Court does not sit to second-guess strategic and tactical choices made by trial counsel. The Petitioner has failed to demonstrate by clear and convincing evidence that trial counsel was deficient, and that the deficient performance prejudiced him.

. . . .

. . . This Court finds that trial counsel’s decision to not cross-examine the minor victim about other “possible” males in her life that may have abused her was a sound legal strategy developed from the trial counsel’s training and experience. The Petitioner has failed to demonstrate by clear and convincing evidence that trial counsel was deficient, and that the deficient performance prejudiced him.

. . . .

. . . The facts of the case demonstrated that [the Petitioner] was arrested near the border with a large amount of cash after having missed two court dates. The Court finds that it was a reasonable and strategic decision for trial counsel to enter into a stipulation regarding the arrest in lieu of insisting that border patrol agents come and testify about the details of the arrest or perhaps other damaging testimony about flight being introduced to the jury. The Petitioner has failed to demonstrate by clear and convincing evidence that trial counsel was deficient, and that the deficient performance prejudiced him.

. . . .

Petitioner alleges that the cumulative effect of these errors would constitute ineffective assistance of counsel. Because this Court does not find

errors as outlined in Issues 1-19 above, this Court finds that the cumulative error doctrine is inapplicable.

The Petitioner filed a timely notice of appeal, and this case is now properly before this Court for review.

### **ANALYSIS**

The Petitioner argues the post-conviction court erred in denying his petition for relief. Specifically, the Petitioner alleges that he received ineffective assistance of counsel based on four asserted grounds: (1) trial counsel failed to ask key credibility-related questions during the Petitioner's direct examination regarding household tension between him and the child-victim; (2) trial counsel failed to cross-examine the victim about other men in her environment who, according to the Petitioner, could have provided alternative explanations or suspects; (3) trial counsel erred by stipulating to evidence describing the Petitioner's arrest near the U.S.-Mexico border, which suggested flight and implied consciousness of guilt; and (4) the cumulative effect of these alleged deficiencies deprived him of a fair trial.

The State responds that the post-conviction court properly denied his ineffective assistance of counsel claim because trial counsel acted strategically in not asking specific questions at trial and by agreeing to the stipulation. The State argues that the Petitioner failed to prove that trial counsel's performance was deficient and prejudiced the trial. Lastly, the State argues that the record does not reflect deficient representation on any single issue, and therefore no cumulative error claim is possible. We agree with the State.

The following well-established legal framework applies to all post-conviction claims alleging ineffective assistance of counsel. Post-conviction relief is only warranted when a petitioner establishes that his or her conviction or sentence is void or voidable because of an abridgement of a constitutional right. Tenn. Code Ann. § 40-30-103. A post-conviction petitioner has the burden of proving the factual allegations by clear and convincing evidence. Id. § 40-30-110(f); see Tenn. Sup. Ct. R. 28, § 8(D)(1); Nesbit v. State, 452 S.W.3d 779, 786 (Tenn. 2014). Evidence is considered clear and convincing when there is no serious or substantial doubt about the accuracy of the conclusions drawn from it. Lane v. State, 316 S.W.3d 555, 562 (Tenn. 2010); Grindstaff v. State, 297 S.W.3d 208, 216 (Tenn. 2009); Hicks v. State, 983 S.W.2d 240, 245 (Tenn. Crim. App. 1998).

A claim for post-conviction relief based on alleged ineffective assistance of counsel presents a mixed question of law and fact. Mobley v. State, 397 S.W.3d 70, 80 (Tenn. 2013) (citing Calvert v. State, 342 S.W.3d 477, 485 (Tenn. 2011)). This court reviews "a post-conviction court's conclusions of law, decisions involving mixed questions of law and

fact, and its application of law to its factual findings de novo without a presumption of correctness.” Whitehead v. State, 402 S.W.3d 615, 621 (Tenn. 2013) (citing Felts v. State, 354 S.W.3d 266, 276 (Tenn. 2011); Calvert, 342 S.W.3d at 485). However, a post-conviction court’s findings of fact are conclusive on appeal unless the evidence in the record preponderates against them. Calvert, 342 S.W.3d at 485 (citing Grindstaff, 297 S.W.3d at 216; State v. Burns, 6 S.W.3d 453, 461 (Tenn. 1999)). Appellate courts do not “re-weigh or re-evaluate the evidence, nor are they free to substitute their own inferences for those drawn by the post-conviction court.” Whitehead, 402 S.W.3d at 621 (citing State v. Honeycutt, 54 S.W.3d 762, 766 (Tenn. 2001)). Generally, “appellate courts must defer to a post-conviction court’s findings with regard to witness credibility, the weight and value of witness testimony, and the resolution of factual issues presented by the evidence.” Id. (citing Momon v. State, 18 S.W.3d 152, 156 (Tenn. 1999)).

The right to effective assistance of counsel is protected by both the United States Constitution and the Tennessee Constitution. U.S. Const. amend. VI; Tenn. Const. art. I, § 9. To prevail on an ineffective-assistance-of-counsel claim, the petitioner must establish that (1) his lawyer’s performance was deficient and (2) this deficient performance prejudiced the defense. Goad v. State, 938 S.W.2d 363, 369 (Tenn. 1996); Strickland v. Washington, 466 U.S. 668, 687 (1984). “Because a petitioner must establish both prongs of the test, a failure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim.” Goad, 938 S.W.2d at 369.

A petitioner successfully demonstrates deficient performance when the petitioner establishes that his attorney’s conduct fell “below an objective standard of reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688; Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975)). Prejudice arising therefrom is demonstrated once the petitioner establishes “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 370 (quoting Strickland, 466 U.S. at 694).

In assessing an attorney’s performance for the deficiency prong, we “must be highly deferential and should indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Burns, 6 S.W.3d at 462 (citing Strickland, 466 U.S. at 689). In addition, we must avoid the “distorting effects of hindsight” and must “judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” Strickland, 466 U.S. 689-90. “No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.” Id. at 688-89. “However, deference to matters of strategy and tactical choices applies only if the choices

are informed ones based upon adequate preparation.” House v. State, 44 S.W.3d 508, 515 (Tenn. 2001) (quoting Goad, 938 S.W.2d at 369).

Tennessee courts have recognized that decisions about what questions to ask — and what testimony to elicit — fall within the category of strategic and tactical choices reserved for defense counsel. See Pylant v. State, 263 S.W.3d 854, 873-74 (Tenn. 2008) (“Strategic and tactical decisions should be made by defense counsel after consultation with the client . . . . [and] [s]uch decisions include what witnesses to call, whether and how to conduct cross-examination, . . . and what evidence should be introduced.” (quoting ABA Standards for Criminal Justice: Prosecution and Defense Function § 4-5.2(b) (Am. B. Ass’n 1993))); Id. at 873 (stating that “[b]ecause these decisions require the skill, training, and experience of the advocate, the power of decision on them should rest with the lawyer” and that the lawyer should maintain “the ultimate choice and responsibility for the strategic and tactical decisions in the case[.]” (quoting id. § 4-5.2 cmt.)). Additionally, “[s]trategic 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.” Felts v. State, 354 S.W.3d 266, 277 (Tenn. 2011) (quoting Strickland, 466 U.S. at 690-91); see also Baxter, 523 S.W.2d at 935-36 (recognizing that counsel should investigate all apparently substantial defenses); Hellard v. State, 629 S.W.2d 4, 9 (Tenn. 1982) (emphasizing that a reviewing court should not second guess counsel’s strategic and tactical decisions). Counsel’s duty is “to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” Strickland, 466 U.S. at 691. “The reasonableness of counsel’s actions may be determined or substantially influenced by the defendant’s own statements or actions,” and “what investigation decisions are reasonable depends critically on such information.” Id.

I. Trial Counsel’s Alleged Failure to Ask Specific Questions During Direct Examination. The Petitioner argues that trial counsel failed to ask him questions “on direct examination about sources of tension between he and the victim, which [the Petitioner] avers would have ‘ill feelings’ or ‘prejudice’ against him.” The Petitioner insists that trial counsel was ineffective for failing to ask the Petitioner questions about his relationship with the victim, asserting such testimony would have shown the victim’s bias. Because trial counsel acknowledged that, in any rape of a child case, a defense attorney must show what reason the victim would have to lie in order to undermine their credibility, the Petitioner maintains, that had trial counsel asked more questions about the sources of tension between the Petitioner and the victim, “there is a reasonable probability that the outcome of the trial would have been different.” We disagree.

As an initial matter, the trial transcript reflects that trial counsel did cross-examine the victim about her relationship with the Petitioner and the victim testified that the Petitioner was strict and “had very clear ideas of what was good and bad.” Moreover, at the post-conviction hearing, both the Petitioner and trial counsel testified that they met multiple times prior to trial, and that they discussed strategy, and practiced questions for direct and cross-examination. Trial counsel acknowledged discussing questions regarding household rules or tensions as the source of the victim’s bias with the Petitioner during trial preparation but concluded that such an explanation would be “a difficult sell to the jury” and elected not to pursue the line of questioning. Trial counsel further explained that he was “never particularly satisfied with that as an explanation.” In denying relief, the post-conviction court determined that “issues discussed prior to trial may indeed change during a trial for various reasons and there was no error in not raising the issues presented by Petitioner, but more so trial strategy.” The post-conviction court further declined to “second-guess strategic and tactical choices made by trial counsel.”

Upon review, we conclude that the record fully supports the determination of the post-conviction court. As a general matter, proving bias requires a showing that the proposed line of questioning would have produced meaningful impeachment rather than speculative or marginally relevant testimony. Here, the Petitioner’s claim rests on minor household friction arising from parental restrictions on electronics and entertainment. While such evidence may, in some cases, bear on a witness’s attitude toward a defendant, nothing in this record suggests that these household rules created a level of antagonism capable of undermining the victim’s credibility in a rape-of-a-child prosecution. Counsel reasonably could have concluded that pursuing this theory risked appearing trivial or distracting in the eyes of the jury. Based on the above principles and law, we conclude that trial counsel’s strategic decision not to pursue further questioning on an unpersuasive theory of bias was reasonable and thus entitled to substantial deference. Given the victim’s consistent identification of the Petitioner and the nature of her testimony, the Petitioner has not shown that additional questions about household tension or rules would have produced a reasonable probability of a different outcome. The record does not establish deficient performance or prejudice. The Petitioner is not entitled to relief.

II. Trial Counsel’s Alleged Failure to Cross-Examine the Victim about Other Men. The Petitioner next argues that trial counsel was deficient for failing to question the victim about other males who visited the home. He asserts that because the victim was young, “the jury needed to be provided with an explanation as to how she would have knowledge of the male anatomy and sexual abuse acts.” As an initial matter, the trial transcript shows that the State questioned the Petitioner about other adult men. While the Petitioner insisted that other male visitors frequently came to their home, the Petitioner also agreed that he was unemployed at the time of the abuse and left alone with the victim regularly. At the post-conviction hearing, the Petitioner and trial counsel testified regarding their

discussions of other male individuals—relatives and occasional visitors—who could have been “alternate suspects” or provided an explanation for the child-victim’s exposure to sex. Significantly, however, trial counsel recognized that this case was not an identity case. Here, the twelve-year-old victim, age eight at the time of the abuse, consistently identified the Petitioner, her father, as the perpetrator, drew a picture of his penis, and never suggested that any other male had abused her. In rejecting this issue, the post-conviction court accredited the testimony of trial counsel and determined that he made a strategic decision not to pursue this line of questioning.

Upon review, we conclude that the record fully supports the determination of the post-conviction court. Credible evidence suggesting alternate suspects must rest on more than speculation. Here, the Petitioner’s theory rests solely on the presence of unnamed male visitors, none of whom the victim ever identified as having engaged in abuse. Trial counsel therefore faced the risk that raising such matters would appear to the jury as an attempt to create doubt where none legitimately existed. Once again, applying the above principles and law to this issue, we conclude that trial counsel’s decision not to pursue speculative cross-examination about non-suspect individuals was a reasonable strategic choice. The Petitioner has failed to show deficient performance or that such questioning would have produced a reasonable probability of a different verdict. He is not entitled to relief.

III. Trial Counsel’s Alleged Error in Stipulating to Evidence Describing the Petitioner’s Arrest Near the U.S.-Mexico Border. The Petitioner further asserts that trial counsel erred by entering into a stipulation that he was arrested “near the United States/Mexican border,” which implied that he was trying to flee the country. This, the Petitioner asserts, “would have led the jury to infer a consciousness of guilt.” The record shows that trial counsel agreed to the stipulation as a strategy to minimize drawing attention to the Petitioner’s removal of the GPS device, interstate travel, and arrest. Trial counsel then countered any negative inference by using a map to illustrate the relative distance of the border patrol checkpoint from the border. In denying this issue, the post-conviction court determined, and we agree, that the facts of the case demonstrated that the Petitioner was indeed arrested in Texas, and “near the border with a large amount of cash after having missed two court dates.” Further, as the post-conviction court found, trial counsel’s decision was an attempt to mitigate the negative implications of the Petitioner’s actions. The Petitioner has not demonstrated that counsel’s strategic handling of damaging facts fell below reasonable professional norms or resulted in prejudice. On this issue, he is not entitled to relief.

IV. Cumulative Error. Lastly, the Petitioner argues that the issues raised, in the aggregate, “have a cumulative effect so great as to require reversal in order to preserve his right to a fair trial.” Under the cumulative error doctrine, multiple errors committed in a

trial proceeding, while harmless in isolation, “when aggregated, have a cumulative effect on the proceedings so great as to require reversal in order to preserve a defendant’s right to a fair trial.” State v. Hester, 324 S.W.3d 1, 76 (Tenn. 2010). “To warrant assessment under the cumulative error doctrine, there must have been more than one actual error committed in the trial proceedings.” Id. at 77. Finding no errors in the enumerated issues, the post-conviction court concluded, and we agree, that the cumulative error doctrine does not apply. Accordingly, the Petitioner is not entitled to relief.

### **CONCLUSION**

We affirm the judgment of the post-conviction court.

s/ *Camille R. McMullen*

CAMILLE R. MCMULLEN, JUDGE