

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
July 9, 2026 Session

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Clerk of the
Appellate Courts

JOE JACKSON v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County
No. 13-00783 W. Mark Ward, Judge

No. W2025-01075-CCA-R3-PC

A Shelby County jury convicted the Petitioner, Joe Jackson, of aggravated assault and reckless endangerment, and the trial court sentenced him to fourteen years. The Petitioner appealed. This Court affirmed. The Petitioner filed a petition for post-conviction relief, which the post-conviction court dismissed for failure to prosecute, and this Court reversed and remanded for further post-conviction proceedings. On remand, the post-conviction court recused itself, a new judge was assigned, and the new judge appointed counsel, who filed an amended petition that alleged that the Petitioner had received the ineffective assistance of counsel. After a hearing, the post-conviction court denied relief. The Petitioner now appeals. On appeal, the Petitioner maintains that he received the ineffective assistance of counsel. After review, we affirm the post-conviction court's judgment.

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

ROBERT W. WEDEMEYER, P.J., delivered the opinion of the Court, in which TIMOTHY L. EASTER, and MATTHEW J. WILSON, JJ., joined.

Lance R. Chism, Memphis, Tennessee, for the appellant, Joe Jackson.

Jonathan Skrmetti, Attorney General and Reporter; George Kirby May, Assistant Attorney General; Steven J. Mulroy, District Attorney General; Marie A. Ford, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts

A. Trial Facts

This case arises from the Petitioner's attempted shooting of the victim, Kent Payne, on November 6, 2012, during which the second victim, Derekia Sanders, ducked to avoid

being shot. The Petitioner was originally indicted for attempted second degree murder, aggravated assault, employing a firearm during a felony, and reckless endangerment. After a trial, the jury found him guilty of the lesser-included offenses of aggravated assault of Mr. Payne and the reckless endangerment of Ms. Sanders. The post-conviction court summarized the underlying facts as follows:

Kent Payne testified that on Nov. 6, 2012, [at approximately 8:30 a.m.] he was walking down the street in front of Petitioner's home. Petitioner saw him, stepped outside, and told Payne, "N[***] . . . you don't walk down my street." Payne kept walking but looked back and saw the Petitioner pursuing him in a sport utility vehicle (SUV). Payne saw a girl he knew [Derekia Sanders] and he stopped beside her car in a driveway. The Petitioner then stopped the SUV he was driving on the street approximately twenty-five feet from Payne. Petitioner got out of the vehicle and pointed a gun at Payne[.] Payne asked Ms. Sanders if he could get inside her vehicle, but she refused and locked the door. Petitioner fired one shot at Payne, and Payne ran fearing for his life. As Payne fled, Petitioner fired a second shot. Petitioner got into his SUV and followed Payne, rolled down his passenger window and fired a third shot towards Payne before driving away.

On cross-examination, Payne acknowledged that he had used two aliases and had twice ple[aded] guilty to theft. Defense counsel further cross-examined Payne regarding several inconsistencies between his trial testimony and his prior statements. He admitted that he did not tell the police in his statement that Petitioner had used a racial slur. Payne also conceded that he told the police that Petitioner may have shot at him because the Petitioner thought Payne was having an affair with Petitioner's wife. At trial, Payne testified that he was not sure why the Petitioner had shot at him.

Derekia Sanders testified that she knew both the Petitioner and Mr. Payne "just from the neighborhood," but her mother was dating the Petitioner's nephew and she was good friends with Mr. Payne's brother. She further testified that she saw the victim running up to her with the Petitioner following in his SUV. She testified that the Petitioner got out and fired two shots at the victim, after which, she saw the Petitioner get back in his SUV and follow the victim. Ms. Sanders further testified that she went back in her mother's house after the shooting and as she was telling her mom what had happened, Petitioner snatched the screened door open and asked her what she was saying. Ms. Sanders told him she was going to call the police and [P]etitioner left.

Both Mr. Payne and Ms. Sanders made 911 calls and reported the incident to police, and Payne took officers to Petitioner's home. No shell

casings, bullet fragments, bullet strikes, bullet holes or broken glass were found at the crime scene. When the Petitioner was arrested no gun was found, but ammunition was discovered. Petitioner did not have gunshot residue on his hands, but he had been allowed to use the restroom prior to the test and the absence of gunshot residue could be explained if the Petitioner had washed his hands. Officer J.R. Rector testified that he tried to test the Petitioner using an Alternative Light Source (ALS) but Petitioner became uncooperative and would not sit still for the test.

Sgt Kevin Bernard Baker testified that he took a statement from the Petitioner. The Petitioner said he went to his sister's house to make some repairs. At the house, he saw Payne smoking drugs and "ran him away." However, Petitioner denied shooting at Payne.

Petitioner elected not to testify at trial and he did not offer an alibi defense.

The Petitioner appealed his convictions, and this court affirmed. *State v. Jackson*, No. W2014-00901-CCA-R3-CD, 2015 WL 5682855, at *1 (Tenn. Crim. App. Sept. 25, 2015), *perm. app. denied* (Tenn. Feb. 18, 2016). The Petitioner then filed a timely petition for post-conviction relief, which the post-conviction court dismissed, finding that the Petitioner had abused the judicial process. *Jackson v. State*, No. W2019-00731-CCA-R3-PC, 2020 WL 5792961, at *1 (Tenn. Crim. App. Sept. 25, 2020), *no perm. app. filed*. The Petitioner appealed, and we reversed and remanded the matter for an evidentiary hearing. *Id.*

B. Post-Conviction Facts

On remand, the post-conviction court recused itself, and the Shelby County Criminal Court reassigned the matter to another criminal judge. The post-conviction court appointed counsel and held a hearing.¹

The Petitioner's trial counsel ("Counsel") testified that he was appointed to represent the Petitioner. Counsel was asked about several of the allegations of ineffective assistance of counsel. The first allegation was that it was ineffective of counsel to not object when the State referred to the Petitioner as "the King of Whitehaven Lane" during closing argument. Counsel said that he did not object because the case against the Petitioner was not strong and the prosecutors were "grasping at straws." Strategically, he thought it was best not to object. He further did not think that the statement was inflammatory or convincing to the jury, as it acquitted the Petitioner of attempted second degree murder. For the same reasons, Counsel did not object to the State saying that the

¹ We will limit our summary of the facts to those relevant to the allegations the Petitioner maintains on appeal.

Petitioner “asked one of his peasants, Derekia Sanders, what she was doing,” which was in line with the “king theme.” He thought the argument was “silly,” and he did not want to give it any more credence.

Counsel said he did not move for a mistrial based on the aforementioned statements during closing argument because he thought that he had presented a strong defense. This was confirmed by the fact that the jury acquitted the Petitioner of the most serious charge. Counsel did not want a new trial with a different jury that might arrive at a different conclusion.

Counsel acknowledged that, during rebuttal closing, the State likened his cross-examination of Ms. Sanders to a “puppy tearing apart a ragdoll.” He said he had been practicing law for over thirty years and found this insult “mild” compared to others he had endured. He did not find it worthy of objection. He thought the statement was “stupid,” so he made a strategic decision not to object to it.

Counsel recalled that the State disclosed in discovery that Lieutenant Cleveland put a light source on the Petitioner and saw evidence of gunshot residue. It was also disclosed that the gunshot residue test of the Petitioner’s hands returned negative for gunshot residue. Counsel recalled that, in his opening statement, he told the jury that there was no proof of gunshot residue on his client’s hands. Counsel agreed that the State asked Detective Saulsberry about the observations of Lieutenant Cleveland. He said that he objected to this testimony. The Petitioner, however, alleged that Counsel objected too late and should have objected right when the question was first asked, a second or two before he objected.

Upon further questioning by the post-conviction court, post-conviction counsel explained that, during the trial, the State had asked the detective, “What do you remember about when Lieutenant Cleveland was there with petitioner?” There was no immediate objection, and Detective Saulsberry said, “Yeah. Well, Lieutenant Cleveland, he cut off the lights and started looking around and he saw some” It was at this point that Counsel objected. Post-conviction counsel agreed that it was never clear what “some” referred to because Counsel objected before the detective could discuss the light source. Post-conviction counsel argued, however, that the jury could have thought that the lieutenant saw “something incriminating.” Counsel’s objection was sustained, and the trial court informed the detective that he could not testify about what Lieutenant Cleveland may have seen. Counsel agreed that he should have objected sooner.

The post-conviction court noted that as soon as the detective said the word “saw,” Counsel objected. There was no ground for an objection before the word “saw” was said. Post-conviction counsel said that Counsel should have anticipated that the detective was going to say something objectionable.

Post-conviction counsel further took issue with Counsel’s failure to object to the

State's continued examination of Detective Saulsberry about Lieutenant Cleveland's actions. He noted that, during the trial, the State said, "I'm not going to ask you what . . . [Lieutenant] Cleveland saw . . . but in response to what [Lieutenant] Cleveland did, what did you do?" The post-conviction court asked what grounds Counsel would have had to object to that question. Post-conviction counsel indicated that the objection would address anticipated hearsay because, thereafter, Detective Saulsberry said that he called crime scene to come and photograph the Petitioner because there was possible gunshot residue on his face. The post-conviction court noted that there were no positive gunshot residue tests admitted into evidence.

Counsel said that he did not object to these questions by the State because he believed that his objection would be overruled. An overruled objection worked against a defendant in a trial, making it appear that he had something to hide. Strategically, Counsel chose not to object. Post-conviction counsel posited that, while there was no testimony about any residue on the Petitioner's face, the jury could have concluded that the officers "at least thought they saw residue on the face."

Counsel did not recall stating during his closing argument that Officer Rector said that there was residue on the Petitioner's face. He agreed that he may have misspoken and been referring to Lieutenant Cleveland, but he said he would rely on the trial transcript.

Counsel said that the Petitioner did not give him names of potential witnesses to call at trial. The Petitioner did not give him the name of the Petitioner's sister, Joyce Lyons, to call at trial. Counsel said that, similarly, the Petitioner did not give him the name of Marva Butler as a potential witness. Counsel explained that Rachael Geiser was the investigator on this case, and he described her as excellent at investigating. He explained that, if the Petitioner had given the names of potential witnesses to Ms. Geiser, she would have investigated those witnesses.

Counsel acknowledged that Ms. Sanders testified at trial that the Petitioner fired the shots and then got back in his truck and went behind Mr. Payne. At the preliminary hearing, that same witness testified that, after the Petitioner fired the shots, he got back in his truck and drove in the opposite direction of Mr. Payne. Counsel said he may not have recognized this inconsistency. Counsel acknowledged that he highlighted for the jury in his closing argument that Ms. Sanders' testimony was inconsistent with her preliminary hearing testimony, but he may have missed some of the specific inconsistencies.

Counsel testified that he also did not call Angela Hibbler, the Petitioner's wife, as a witness. Post-conviction counsel asked if he should have called her to discuss her relationship with Mr. Payne. Counsel testified that his meetings with the Petitioner were not particularly helpful. He described the Petitioner as "excitable" and said that, many times, the Petitioner made comments indicating that he believed that if he had a paid lawyer rather than a court-appointed lawyer, he would not be in his position. Counsel did not

recall the Petitioner ever mentioning Ms. Hibbler's relationship with Mr. Payne. The Petitioner did tell Counsel that he and Ms. Hibbler were in a custody dispute over their daughter, but Counsel did not recall the Petitioner mentioning a relationship between Ms. Hibbler and Mr. Payne. He did recall asking one of the officers whether Mr. Payne told the officer that he thought the Petitioner was shooting at him because the Petitioner thought that Mr. Payne was "messing with" his soon-to-be ex-wife.

The post-conviction court noted that the Petitioner told police that he never shot a gun that evening. The court questioned whether calling Ms. Hibbler would have been counterproductive in that it would have provided the jury with a motive for the shooting.

Counsel said that he asked for a sequestered jury because the Petitioner had additional charges pending, and Counsel did not want the jurors to do any research and find any of his criminal history or pending charges.²

During cross-examination, Counsel testified that he negotiated this case with the State, and it offered to allow the Petitioner to enter a guilty plea, but the Petitioner chose to go to trial. The Petitioner was "excitable," would "get mad at [Counsel] frequently," and raised his voice at Counsel. Counsel presented a defense based upon the fact that the State's witnesses were not reliable or truthful. He believed that the jury agreed, as they acquitted the Petitioner of second-degree murder and, by extension, found him not guilty of employment of a firearm. Counsel said that he asked the Petitioner what defense witnesses they should call but received no answer.

Counsel reiterated that he asked for a sequestered jury because he did not want the jury gathering information about the Petitioner on their own. The Petitioner had a criminal history and other pending charges, which included a stalking charge.

During redirect, Counsel said that the Petitioner maintained throughout the duration of his representation that the other witnesses were lying. He never mentioned having a run in with Mr. Payne the night before, and only said that everyone was lying, including the police officers who took his statement.

Ms. Sanders testified, and post-conviction counsel asked her about her contradicting testimony about the direction the Petitioner went after shooting the weapon. Ms. Sanders said she could not recall step-by-step what happened after the shooting. She acknowledged that her testimony at the preliminary hearing was that the Petitioner went the opposite way of Mr. Payne after the shooting, and that her trial testimony was that he went the same direction as Mr. Payne. She stated, however, that these events were thirteen years ago, and she was unsure which direction the Petitioner went after the shooting.

² There was a break in the proceedings because Counsel had another appointment. The cross-examination occurred at a later date but we will include it here.

Ms. Sanders also explained her trial testimony regarding the location of her vehicle during the shooting. She said she was at the end of her mother's driveway by the curb, pulled in facing her mother's house. The Petitioner was at her trunk near the curb, and Mr. Payne was located near the front of her vehicle by the bumper. She did not feel this conflicted with her preliminary hearing testimony, which described the Petitioner near the street.

Ms. Sanders agreed that she testified at trial that she was going to vote that morning. She also agreed that she did not mention that at the preliminary hearing. She explained that she was not asked about it at the preliminary hearing and simply did not mention her plans for that day.

During cross-examination, Ms. Sanders said that when the Petitioner arrived his vehicle was facing Tulane, which was the direction in which Mr. Payne ran. In order for him to turn his vehicle around to go in the opposite direction, he likely would have gone forward toward Tulane before turning around and traveling in the opposite direction. She did not remember, however, if this was what the Petitioner did.

Ms. Sanders said that this incident was unexpected and "scary." She testified to the best of her ability and to the best of her recollection at both the preliminary hearing and at the trial. Upon questioning by the post-conviction court, Ms. Sanders testified that she had no doubt that she saw the Petitioner shoot at the victim. Mr. Payne was not armed and ran away. The Petitioner called after him, "stay away from my wife" as Mr. Payne was running away.

Joyce Lyons, the Petitioner's sister, testified that she lived on Whitehaven Lane at the time of this shooting, and her next-door neighbor was Ms. Angela Ireland, who was Ms. Sanders's mother. She was home at the time that the State said that the shooting took place, but she did not hear any gunfire. Ms. Lyons described Whitehaven Lane as busy street upon which a lot of traffic traveled. Ms. Lyons said that no one from the defense team reached out to her about the case, and she did not contact the defense team.

During cross-examination, Ms. Lyons testified that she had no knowledge of these events and could not have offered anything at trial. She agreed that Whitehaven Lane was a narrow, residential road but said that there was a school located on the road so there was traffic during school hours. The Petitioner and Ms. Lyons's mother also lived on Whitehaven Lane in a separate house.

Upon questioning from the court, Ms. Lyons said that the Petitioner had been at her home the night before the shooting, helping her hang ceiling fans. He did not leave her home until approximately 1:00 a.m.

Marva Janeen Butler, the Petitioner's "[g]ood friend," testified that she also lived

on Whitehaven Lane. She said that she did not hear any shots the morning of the alleged shooting, and she lived six or seven houses away from the location. No one from the defense team contacted her.

During cross-examination, Ms. Butler testified that she spoke with the Petitioner in the hallway during the break. The two discussed some voting records, but she was unsure why that was relevant. Ms. Butler then said that she was sure she was up the day of the shooting taking care of her pets. She said she had no knowledge of the shooting and did not hear anything. She again offered that she was not contacted by the defense team.

Angela Hibbler, the Petitioner's ex-wife, agreed that this alleged shooting took place November 6, 2012, and that she and the Petitioner divorced May 2013. During 2012, she got an order of protection against the Petitioner. Also during that time, Mr. Payne did some work in her house. She met Mr. Payne because he was friends with the Petitioner. The two were never romantically involved.

Ms. Hibbler described a tumultuous end to her relationship with the Petitioner. She said that when she brought him divorce papers, the Petitioner began stalking her. He followed her home. The Petitioner called her job and got her fired after sixteen years of service. He called human resources and told them that she was on drugs. The Petitioner seemed to think that Mr. Payne was telling Ms. Hibbler the details of the Petitioner's life, which was true. On one occasion when Mr. Payne was working on her house, she asked him to go get something at the store. The Petitioner was driving nearby in his mother's vehicle, and he hit Mr. Payne, who was driving Ms. Hibbler's truck. She reported these events to the police.

Ms. Hibbler said that the Petitioner continued to stalk her and that every time she saw him on her street, she called the police. One day, while she was at a rehab appointment pertaining to the divorce, the Petitioner shot at Mr. Payne. Mr. Payne told her that he was walking down Whitehaven Lane, and the Petitioner said, "What are you doing on my street" and then shot at him.

Ms. Hibbler agreed that, after the shooting, the court awarded her full custody of their daughter, whose father was the Petitioner. Ms. Hibbler recounted that "it was just ridiculous [be]cause [the Petitioner] was just constantly doing things." He purposefully did everything. She also alleged that, on another occasion, he planted drugs in her truck.

Ms. Hibbler said that, when she met the Petitioner, he was facing rape charges. He came home to their house drunk one evening and hit her in the face while she was holding their baby. She called the police. She said that these incidents continued, and she repeatedly called the police to intervene.

During cross-examination, Ms. Hibbler described the Petitioner as "jealous" and "a

psycho.”

Lieutenant Baker testified that he worked the investigation in this case, which was thirteen years before the post-conviction hearing. He did not recall many of the details but had reviewed his police supplement. He interviewed the Petitioner, who told him that he had gone to his sister’s house to do some repairs on the house. While he was there, he ran into Mr. Payne. Mr. Payne was smoking drugs, so he chased him away.

Lieutenant Baker explained that he did not take a written statement from the Petitioner because the Petitioner denied all the allegations. The lieutenant believed that there was no reason to take a typed statement.

Detective Saulsberry testified and also did not recall the details surrounding this investigation but had reviewed his police file. The detective said that he tried to get the Petitioner to give a typewritten statement but that he refused.

Based upon this evidence and the arguments of counsel, the post-conviction court denied post-conviction relief. It is from this judgment that the Petitioner now appeals.

II. Analysis

On appeal, the Petitioner contends that the post-conviction court erred in denying his petition for post-conviction relief because Counsel was ineffective for failing to object on multiple occasions; misstating evidence in closing argument; failing to present multiple witnesses; and asking for a sequestered jury. He further contends that the cumulative effect of these errors entitles him to post-conviction relief.

To obtain post-conviction relief, a petitioner must show that his or her conviction or sentence is void or voidable because of the abridgment of a constitutional right. T.C.A. § 40-30-103 (2018). The petitioner bears the burden of proving factual allegations in the petition for post-conviction relief by clear and convincing evidence. T.C.A. § 40-30-110(f) (2018). Upon review, this court will not re-weigh or re-evaluate the evidence below; all questions concerning the credibility of witnesses, the weight and value to be given their testimony, and the factual issues raised by the evidence are to be resolved by the trial judge, not the appellate courts. *Momon v. State*, 18 S.W.3d 152, 156 (Tenn. 1999) (citing *Henley v. State*, 960 S.W.2d 572, 578-79 (Tenn. 1997)). A post-conviction court’s factual findings are subject to a *de novo* review by this court; however, we must accord these factual findings a presumption of correctness, which can be overcome only when a preponderance of the evidence is contrary to the post-conviction court’s factual findings. *Fields v. State*, 40 S.W.3d 450, 456-57 (Tenn. 2001). A post-conviction court’s conclusions of law are subject to a purely *de novo* review by this court, with no presumption of correctness. *Id.* at 457.

The right of a criminally accused to representation is guaranteed by both the Sixth Amendment to the United States Constitution and article I, section 9, of the Tennessee Constitution. *State v. White*, 114 S.W.3d 469, 475 (Tenn. 2003); *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999); *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). The following two-prong test directs a court's evaluation of a claim for ineffectiveness:

First, the [petitioner] 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 [petitioner] by the Sixth Amendment. Second, the [petitioner] must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the [petitioner] of a fair trial, a trial whose result is reliable. Unless a [petitioner] makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Strickland v. Washington, 466 U.S. 668, 687 (1984); *see also State v. Melson*, 772 S.W.2d 417, 419 (Tenn. 1989).

In reviewing a claim of ineffective assistance of counsel, this Court must determine whether the advice given or services rendered by the attorney are within the range of competence demanded of attorneys in criminal cases. *Baxter*, 523 S.W.2d at 936. To prevail on a claim of ineffective assistance of counsel, "a petitioner must show that counsel's representation fell below an objective standard of reasonableness." *House v. State*, 44 S.W.3d 508, 515 (Tenn. 2001) (citing *Goad v. State*, 938 S.W.2d 363, 369 (Tenn. 1996)).

When evaluating an ineffective assistance of counsel claim, the reviewing court should judge the attorney's performance within the context of the case as a whole, taking into account all relevant circumstances. *Strickland*, 466 U.S. at 690; *State v. Mitchell*, 753 S.W.2d 148, 149 (Tenn. Crim. App. 1988). The reviewing court should avoid the "distorting effects of hindsight" and "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. at 689-90. In doing so, the reviewing court 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. Finally, we note that a defendant in a criminal case is not entitled to perfect representation, only constitutionally adequate representation. *Denton v. State*, 945 S.W.2d 793, 796 (Tenn. Crim. App. 1996). In other words, "in considering claims of ineffective assistance of counsel, 'we address not what is prudent or appropriate, but only what is constitutionally compelled.'" *Burger v. Kemp*, 483 U.S. 776, 794 (1987) (quoting *United States v. Cronin*, 466 U.S. 648, 665 n.38 (1984)). Counsel should not be deemed to have been ineffective merely because a different procedure or strategy might have produced a different result.

Williams v. State, 599 S.W.2d 276, 279-80 (Tenn. Crim. App. 1980). ““The fact that a particular strategy or tactic failed or hurt the defense, does not, standing alone, establish unreasonable representation. However, deference to matters of strategy and tactical choices applies only if the choices are informed ones based upon adequate preparation.”” *House*, 44 S.W.3d at 515 (quoting *Goad*, 938 S.W.2d at 369).

If the petitioner shows that counsel’s representation fell below a reasonable standard, then the petitioner must satisfy the prejudice prong of the *Strickland* test by demonstrating “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694; *Nichols v. State*, 90 S.W.3d 576, 587 (Tenn. 2002). This reasonable probability must be “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694; *Harris v. State*, 875 S.W.2d 662, 665 (Tenn. 1994).

A. Failing to Object

The Petitioner’s first four issues relate to his contention that Counsel failed to object to comments by the prosecutor during closing argument and to evidence or, in one instance, failed to lodge his objection soon enough. The Petitioner contends Counsel was ineffective when he failed to object to: (1) the State referring to the Petitioner as the “King of Whitehaven Lane” during closing argument; (2) the State comparing Counsel to a puppy tearing apart a rag doll; and (3) the State’s continued questioning of Detective Saulsberry about Lieutenant Cleveland’s actions. He also contends that Counsel did not object soon enough to Detective Saulsberry’s testimony about Lieutenant Cleveland shining the light source on the Petitioner and should have anticipated the direction of the testimony and objected before Detective Saulsberry answered the question.

1. “King of Whitehaven Lane”

The Petitioner contends that Counsel was ineffective for not objecting when the State referred to him as the “King of Whitehaven Lane” during closing argument. He asserts that this phrase “undoubtedly has a negative connotation in the context of this case,” and that the prosecutor was implying that the Petitioner felt like he owned the road and could dictate who could walk down the street. This statement, he asserts, painted him in an extremely negative light, in part because “the United States of America was formed, in large part, because people did not want to live under the rule of a king.” He further asserts that this comparison “likely” would have been interpreted by the jury as referring to the Petitioner as a drug dealer.

The post-conviction court found:

From a review of the State’s closing argument it is readily apparent that the State adopted as the theme for its argument the phrase “King of

Whitehaven Lane.” As with all good themes, the State repeated the phrase multiple times during closing argument. [Counsel] did not object to the phrase.

....

During the post-conviction evidentiary hearing [Counsel] was asked “why” he chose not to object [or request a mistrial] during the State’s closing argument [on this basis]. [Counsel] indicated that he made a tactical decision not to object to this characterization because he did not believe it to be inflammatory and he believed the fact that the State had to resort to such a “silly” characterization indicate that the state was “grasping at straws” in their closing argument. As he put it: “I didn’t want to give their argument anymore credence. It was silly.” With regard to the question of whether such characterization of the Petitioner was inflammatory, [Counsel] noted that the jury returned a verdict of not guilty as to the most serious charged offense.

The post-conviction court found that Counsel explained his tactical reasons for not objecting and stated that it would not second-guess those reasons. The court went on to find that the Petitioner had failed to show that the failure to object constituted deficient performance. The court noted that “the argument fit[] the evidence,” and that the fact that the prosecutor made a closing argument that put the Petitioner in a “negative light” should come as no surprise. After citing the law relevant to closing argument, the court found that it bordered on “ludicrous” to argue that the phrase “King of Whitehaven Lane” was “inflammatory.” It noted that the phrase “King” is also used with great respect, was not inflammatory, and any objection would likely have been denied. The court stated, “The phrase is not inflammatory at all, but most certainly not inflammatory enough to give rise to a reasonable probability of a different verdict.” The court concluded that the Petitioner had failed to prove he was entitled to post-conviction relief on this ground. We agree.

Closing arguments are a “valuable privilege” and should not be unduly restricted. *Terry v. State*, 46 S.W.3d 147, 156 (Tenn. 2001). “Consequently, attorneys are given greater leeway in arguing their positions before the jury, and the trial court has significant discretion in controlling these arguments, to be reversed only upon an abuse of that discretion.” *Id.* We have explained that “arguments must be temperate, based upon the evidence introduced at trial, relevant to the issues being tried, and not otherwise improper under the facts or law.” *State v. Goltz*, 111 S.W.3d 1, 5 (Tenn. Crim. App. 2003). The generally recognized areas of prosecutorial misconduct in closing arguments occur when the prosecutor intentionally misstates the evidence or misleads the jury on the inferences it may draw from the evidence; expresses his or her personal opinion on the evidence of the defendant’s guilt; uses arguments calculated to inflame the passions or prejudices of the

jury; diverts the jury from its duty to decide the case on the evidence by injecting issues broader than the guilt or innocence of the accused under the controlling law or by making predictions on the consequences of the jury's verdict; and intentionally refers to or argues facts outside the record, other than those that are matters of common public knowledge. *Id.* at 6.

Our review of the record shows that the prosecutor referred to the Petitioner as the “King of Whitehaven Lane” five times during closing argument. The crux of the State’s argument was that the Petitioner felt he had the right to determine who walked on that street. The Petitioner’s statement to police indicated that he “ran [Mr. Payne] away” from the street because he believed Mr. Payne was smoking drugs. The Petitioner denied that he shot at Mr. Payne, but both Ms. Sanders and Mr. Payne said that the Petitioner had, in fact, fired a weapon multiple times toward Mr. Payne. The State’s closing argument did not fall into any of the generally recognized areas of prosecutorial misconduct in closing arguments. Further, it does not appear from the record that it was intended to inflame the jury.

Counsel’s failure to object because the argument was “silly” was a strategic decision, and it appears to be a strategy that paid off as the Petitioner was acquitted of the most serious charges he faced. Because Counsel’s decision not to object was a strategic one that was made with adequate information as a result of trial preparation, it will not be second-guessed by this court. *State v. Blocker*, No. W2020-00543-CCA-R3-PC, 2021 WL 3140357, at *9 (Tenn. Crim. App. July 26, 2021) (citing *Hellard v. State*, 629 S.W.2d 4, 12; *Tolliver v. State*, 629 S.W.2d 913, 914 (Tenn. Crim. App. 1981); *Muhammad v. State*, No. W2015-01923-CCA-R3-PC, 2016 WL 6915969, at *7 (Tenn. Crim. App. Nov. 22, 2016) (Trial counsel’s decision not to object “because he did not want to annoy the jury” was a strategic one.), *perm. app. denied* (Tenn. April 13, 2017); *State v. Craig and Meadows, Jr.*, No. 85-10-III, 1985 WL 3866, at *3 (Tenn. Crim. App. Nov. 27, 1985) (“There is no obligation on a lawyer to object at every opportunity.”), *perm. app. denied* (Tenn. Mar. 3, 1986)). The post-conviction court did not err when it concluded that Counsel’s performance was not deficient in this regard. Further, the Petitioner cannot prove prejudice. He is therefore not entitled to relief on this issue.

2. “Puppy Tearing Apart a Rag Doll”

During rebuttal closing argument, the prosecutor stated: “[Ms. Sanders] told you all what she saw that day. And although [Counsel] has tried to pick apart her statement like a puppy tearing apart a rag doll, her statement has been ninety-nine percent (99%) consistent.” The Petitioner contends that this was a “demeaning comparison” and Counsel was ineffective by failing to object.

The post-conviction court noted that Counsel said that he had made a strategic decision not to object because, based on his experience, he felt as though the statement was

“very mild” compared to others he had heard in his trial experience. He further felt the argument was “stupid” and showed that the State was “grasping at straws.” The post-conviction court found that it would not second guess Counsel’s strategic decision. It further found that Counsel had “artfully and skillfully” brought up multiple inconsistencies in Ms. Sanders’s testimony and that the jury returned a verdict of guilty on a lesser included offense. We agree. As previously stated, because Counsel’s decision not to object was a strategic one that was made with adequate information as a result of trial preparation, it will not be second-guessed by this court. *Blocker*, 2021 WL 3140357, at *9. The Petitioner has not proven that Counsel was deficient or that he was prejudiced.

3. Detective Saulsberry’s Testimony

The Petitioner contends that Counsel was ineffective for not objecting soon enough to the State’s question to Detective Saulsberry regarding Lieutenant Cleveland’s actions of shining a light on the Petitioner. He further contends that Counsel should have objected to the State’s continued questioning of Detective Saulsberry.

The post-conviction court found:

During the post-conviction evidentiary hearing, [Counsel] was questioned concerning an objection he made during Detective Saulsberry’s direct examination. Detective Saulsberry testified that Lieutenant Cleveland shined a light source on the Petitioner looking for gunshot residue. At one point [Detective] Saulsberry testified “. . . he [Saulsberry] cut off the light and started looking around, and he saw some” At this point [Counsel] entered an objection which was sustained by the trial judge. The jury was never told what the “some” related to but was eventually informed that no gunshot residue was found on Petitioner’s hands. The [P]etitioner’s post-conviction counsel acknowledged that an objection was made and sustained but claimed that the objection should have come earlier and that [C]ounsel should have anticipated that the line of questioning would lead to objectionable information. [Counsel] testified acknowledging that “I should have objected earlier.”

Significantly, the State and Defense entered into a stipulation at the beginning of the trial that the Memphis Police Department administered a gunshot residue test on the Petitioner and that the test was negative. [Counsel] brought out this stipulation and the negative test results in his opening statement.

Petitioner contends that the failure to object “earlier” was deficient performance. No trial is perfect, and no lawyer performs with perfection. Errors and mistakes are inevitable, but not all errors constitute deficient

performance. To show deficient performance, the accused must show “that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland*[,] at 687. [C]ounsel objected and the objection was sustained. At that point, the jury was not told what the “some” related to. At the same time [Counsel] knew that the State had stipulated to a negative result on the gunshot residue test. Petitioner has failed to show deficient performance with regard to this particular objection. More importantly, Petitioner has also failed to show prejudice in light of the stipulated negative gunshot residue test.

We conclude that the post-conviction court did not err when it determined that the Petitioner had not proven that Counsel was deficient or that he was prejudiced. Counsel identified the issue and lodged an objection. We recognize that the Petitioner wishes this objection was lodged slightly sooner, before the detective said the word “some,” but we do not think that the failure to do so was ineffective representation. We further agree with the post-conviction court that the Petitioner has not shown that he was prejudiced by Counsel’s brief delay in objecting.

The post-conviction court also addressed the Petitioner’s contention that Counsel failed to object when the State asked the detective what he did in response to what Lieutenant Cleveland saw. The post-conviction court found:

. . . . In a related matter, Petitioner contends that [C]ounsel provided ineffective assistance of counsel by failing to object when the State asked Detective Saulsberry what he did in response to Lt. Cleveland’s actions with the light source and the purpose of Saulsberry’s actions. More specifically, the following occurred during the direct examination of Detective Saulsberry:

Q. Okay. So in response to – and I’m not going to ask you what Lieutenant Cleveland said or did – or saw, but in response to what Lieutenant Cleveland did, what did you do after that?

A. I called out crime scene.

Q. Okay. What was the purpose of calling out Crime Scene?

A. Like I said, it was – gun residue was possibly on his face, so we called out Crime Scene so they can take pictures and do swabs.

[Counsel] was asked during the post-conviction evidentiary hearing why he did not object when the State asked Detective Saulsberry what he did in response to Lt. Cleveland’s actions with the light source and the purpose

of Saulsberry's actions. [Counsel] testified that he did not object because he felt the judge would overrule the objection and he would look bad in the eyes of the jury and the jury would think that he was trying to hide something.

Petitioner disagrees with [C]ounsel's assumption that the judge would have denied the objection and maintains that the failure to object to this testimony amounted to deficient performance and that absent the jury hearing that there was "possible" gunshot residue on the Petitioner's face, there was a reasonable probability of a different verdict.

The post-conviction court opined that, had Counsel lodged an objection, it would have likely been sustained, and Counsel could have requested a curative instruction. Therefore, it said, the deficient performance question was a closer call. It held, however, that even if it found that the performance was deficient, the Petitioner had still failed to show a reasonable probability of a different verdict had an objection been made and sustained. It reasoned:

The likelihood of a different result must be substantial, not just conceivable. (citation omitted). At trial the alternative light source was described as only being able to determine the "possibility" of gunshot residue. The jury was also told that the gunshot residue test was negative and no other testing was done with regard to the Petitioner's face to determine if the "possibility" was a "reality." Most importantly, in evaluating whether the [P]etitioner has shown a reasonable probability of a different result, it is significant that in both its initial and rebuttal closing arguments the State never mentioned the possibility of gunshot residue on Petitioner's face and made no argument that the jury should consider that in any way in evaluating the guilt of the [P]etitioner. Stated another way, it was so insignificant that it was never mentioned by the State in closing arguments. . . . The jury acquitted the Petitioner of attempted second degree murder. His conviction for aggravated assault was supported by the testimony of the victim and Ms. Sanders as well as Petitioner's own admission to a confrontation with the victim. In addition, the jury was not given an alternative version of the events. The Petitioner did not testify at trial nor call any other witnesses to refute the allegations of the State's witnesses; and he failed to offer an alibi defense. Petitioner has failed to show "prejudice" with regard to this matter.

After review, we agree that the Petitioner has not shown that he was prejudiced. The detective briefly mentioned that he called crime scene to investigate whether there was possible gunshot residue on the Petitioner. The parties stipulated, however, that ultimately there was no gunshot residue found on the Petitioner. The State did not argue at any point that there was "possible" gunshot residue on the Petitioner, and the only evidence before

the jury was that the swabs taken by crime scene tested negative for the presence of gunshot residue. We conclude that Counsel's failure to object did not prejudice the Petitioner.

B. Misstatement of Officer Rector's Testimony

The Petitioner alleges that Counsel was ineffective because he misstated the evidence in his closing argument. Counsel stated, "We come to Officer Rector, and again he's called in to investigate an aggravated assault, and he tells us that upon shining the Alternative Light Source, he sees something that indicated that [the Petitioner] may have fired a gun." Counsel went on to say that soap can lead to a false positive of the Alternative Light Source and that, ultimately, the Gunshot Residue Test was negative.

The post-conviction court noted that the Alternative Light Source testimony occurred during Detective Saulsberry's testimony and not Officer Rector's testimony. Further, the court went on to state:

[Counsel] testified that he was not sure why he made the statement attributing the information to Rector, but he speculated that he must have been thinking about Lt. Cleveland at that point. Lt. Clev[e]land did not testify during the trial, but as mentioned earlier . . . the inference that Cleveland saw the possibility of gun residue on Petitioner's face was brought up during Saulsberry's testimony. As such, it is clear that [Counsel] made a mistake attributing this information about the possibility of gun residue on the Petitioner's face to [Officer] Rector. Whether this mistake rises to the level of deficient performance is a different question. As mentioned through this order, the fact that a defense attorney makes a mistake does not equate with "deficient performance." Errors and mistakes are inevitable, but not all errors constitute deficient performance. To show deficient performance, the accused must show "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland*, at 687. In this case, the information about the "possible" residue on Petitioner's face was before the jury, but [Counsel] simply misidentified the source of the information. Further, it appears that [Counsel] anticipated that the State would argue that there was a negative gunshot residue result because the [P]etitioner had washed his hands with soap before the test was administered. Based on this anticipated argument, and the fact that there was testimony that the use of soap can cause false positives with regard to the Alternative Light Source test, [Counsel] made the above quoted argument in an effort to neutralize and explain the possibility of a false positive with regard to the Petitioner's face. The motivation for the substance of the argument is clearly a trial tactical decision. Whether merely attributing the source of the information to the wrong witness is so serious as to constitute deficient performance is a closer

question.

Nevertheless, assuming that this amounted to deficient performance [P]etitioner has failed to show a reasonable probability of a different result. In this case the results of the gunshot residue test were clearly negative. As such, there was no scientific evidence with regard to gunshot residue offered by the State to corroborate the testimony of the victim and Ms. Sanders. Further, both Detective Saulsberry's statement "that gun residue was possibility on his face: and that the defense argument that [Officer Cleveland] saw "something that indicated that [the Petitioner may have fired a gun" were not couched in conclusive terms but in inconclusive and speculative terms. Against this backdrop, [Counsel] utilized the substance of the challenged argument to effectively neutralize and explain the possibility of a false positive with regard to the Petitioner's face. Most importantly, in evaluating whether the [P]etitioner has shown a reasonable probability of a different result if this argument had not been made, it is significant that in both its initial and rebuttal closing arguments the State never mentioned the possibility of gunshot residue on Petitioner's face and made no argument that the jury should consider that in any way in evaluating the guilt of the [P]etitioner. Stated another way, it was so insignificant that it was never mentioned by the State in closing arguments.

Petitioner has clearly failed to show prejudice with regard to this matter.

After review, we conclude that the post-conviction court did not err when it determined that the Petitioner had not proven that he was prejudiced by Counsel's representation in this regard. While Counsel misspoke and identified the wrong officer, he clearly addressed the issues presented in an effective way. He anticipated the State's argument and provided a reasonable explanation regarding why there may have been a false positive on the Alternative Light Source test (because of the soap), and he highlighted that the gunshot residue test was negative. After a review of Counsel's closing argument, we conclude that Counsel was not ineffective in his representation of the Petitioner.

C. Failure to Call Joyce Lyons, Marva Butler and Angela Hibbler as Witnesses

The Petitioner contends that Counsel was deficient for not calling Joyce Lyons, Marva Butler, and Angela Hibbler as witnesses at trial. The Petitioner called each of the three witnesses at the post-conviction hearing. The State counters that Counsel was not deficient in this regard and further that the Petitioner did not prove that Counsel's failure to call these witnesses prejudiced him.

The post-conviction court found:

Joyce Lyons, the [Petitioner's] sister, testified that no one from the defense team reached out to her after the incident. She further testified that she lived next door to Derekia Sanders's [mother] on Whitehaven Lane, that it was a busy street in the mornings and that she heard no gunshots on the morning of November 6, 2012. Marva Butler, a "good friend" of the [Petitioner] who also lived on Whitehaven Lane next door to the Petitioner's mother, testified [over 12 years later] that she "somewhat" remembered the day November 6, 2012, that no one from the defense team reached out to her after the incident, that Whitehaven Lane is a busy street in the mornings and that she "don't remember any shooting that morning."

The [P]etitioner clearly argues that [C]ounsel provided ineffective assistance of counsel in failing to call Ms. Lyons and Ms. Butler as witnesses. Beyond that, his argument is somewhat convoluted. [Counsel] testified that the [P]etitioner did not give him the names of any witnesses but he utilized a private investigator to conduct the investigation. Although he did not specifically ask her to knock on doors in the neighborhood searching for witnesses, whether she in fact canvased the neighborhood and attempted to locate witnesses from the neighborhood is a matter of speculation. Petitioner did not call that investigator as a witness in the post-conviction evidentiary hearing. As such, the extent of the actual investigation and the efforts of that investigator in this case remain unknown. [Counsel] did not recall the details of her investigation.

When discussing whether it was deficient not to call these two witnesses, the post-conviction court found it significant that neither witness saw the alleged events. At most, they could have testified that they did not hear or remember any gunshots on a morning twelve years prior to the hearing. Further, the fact that they did not hear gunshots that morning did not mean that there were not any gunshots. The trial court noted that counsel has a duty to call witnesses who may aid the defense, but this does not mean that there is a duty to call all witnesses. The court concluded that, while the testimony of these two witnesses would have been admissible, their testimony "would not have materially aided the [P]etitioner's defense." It further found that the Petitioner had not proven that he was prejudiced in this regard.

We agree with the post-conviction court that the Petitioner has not proven his allegations in this regard. He did not testify, and he did not call the investigator in this case to testify. It is unclear whether he informed Counsel of these two witnesses. The witnesses testified at the post-conviction hearing and neither provided compelling evidence. Ms. Lyons's testimony, in which she said that the Petitioner was at her home the night before the shooting until 1:00 a.m. conducting repairs, seemingly contradicted the Petitioner's statement to police that he "went to his sister's house [that morning] to make some repairs."

At the house, he saw Mr. Payne smoking drugs and “ran him away.” Further, as the post-conviction court noted, at most these two witnesses could have said they did not hear any gunshots that morning. Ms. Butler was not certain of the exact morning in question but assumed she would have been awake caring for her animals. Ms. Lyons said she was awake and caring for her sick husband. The fact that neither witness heard a gunshot did not mean that there was not a gun fired. The Petitioner did not prove by clear and convincing evidence that Counsel’s performance was deficient in this regard.

Concerning Ms. Hibbler, the post-conviction court noted that the Petitioner argued that Counsel should have called her to further develop the defense theory that Mr. Payne was having an affair with the Petitioner’s wife and had concocted the charges to get the Petitioner out of the way. The post-conviction court held that the Petitioner did not prove that the failure to call Ms. Hibbler was deficient performance. It found:

She was clearly an adverse witness, and her testimony not only would have negated the fact of an illicit affair with Mr. Payne, but likely would have opened the door to other information prejudicial to the Petitioner.

Petitioner has also failed to show prejudice with regard to this matter. Nothing in Ms. Hibbler’s testimony could have given rise to a reasonable probability of a different more favorable verdict.

After review of Ms. Hibbler’s testimony, we agree with the post-conviction court that it would have much more likely harmed the Petitioner’s defense than aided it. Counsel was not ineffective for failing to call her as a witness.

D. Cross-examination of Ms. Sanders

The Petitioner contends that Counsel was ineffective for failing to cross-examine Ms. Sanders regarding inconsistencies in her testimony. He notes that, at trial, she testified that the Petitioner fired the gun, got in his truck, and went behind Mr. Payne. At the preliminary hearing and in her statement to police, she said that the Petitioner fired the gun, got in this truck, and went the opposite direction of Mr. Payne. He asserts that Counsel should have noted this “glaring inconsistency.” The State counters that, while Counsel noted that he failed to impeach Ms. Sanders in this regard, he thoroughly cross-examined her on numerous inconsistencies and provided adequate representation.

The post-conviction court held:

With regard to Ms. Sanders, Petitioner contends that [C]ounsel was deficient by not adequately cross-examining her about one of the inconsistencies between her trial testimony and her testimony given in the

preliminary hearing and her statement given to the police. More specifically, Ms. Sanders testified in the trial that after the first two shots were fired “[the Petitioner] got in his truck and went behind Mr. Payne.” Post-conviction counsel contends that [Counsel] performed deficiency by not asking her on cross-examination about statements she made in the preliminary hearing and in her written statement to the police that after the shooting [the Petitioner] drove in the opposite direction from which Mr. Payne ran. Neither the statement nor the transcript of the preliminary hearing were made exhibits in the post-conviction evidentiary hearing, so this Court is unable to clearly evaluate the extent of the alleged inconsistency. At the post-conviction evidentiary hearing, [Counsel] indicated he did not pick up on the inconsistency. In addition, Ms. Sanders was questioned about the alleged inconsistency, and she testified [over a decade later] that she “can’t really think back that far to remember basically step by step of what happened that day.” Whether there is a significant inconsistency and whether it could have been explained at trial is speculation. Petitioner has failed to establish his allegations of fact with regard to this matter.

. . . .

Assuming for the sake of argument that there was an inconsistency that [C]ounsel missed, with regard to deficient performance, the failure to cross-examine Ms. Sanders on this one subject must be evaluated in light of [Counsel’s] overall performance in the case. [Counsel] effectively cross-examined both the victim and Ms. Sanders, impeaching the victim in multiple ways and pointing out multiple inconsistencies in the victim’s testimony. Significantly, Petitioner makes no allegation that [Counsel] provided ineffective assistance of counsel in cross-examination of the victim. With regard to Ms. Sanders, the record reflects that [Counsel] questioned her on cross-examination regarding numerous inconsistencies.

The post-conviction court went on to find that, even if there was a material discrepancy in this one regard, Counsel’s performance in cross-examination was effective. The court did not believe that missing this one inconsistency resulted in an error so serious that counsel was not functioning as “counsel” guaranteed to the Petitioner by the Sixth Amendment. It further found the Petitioner had not proven prejudice.

During the post-conviction hearing, the State questioned Ms. Sanders, who stated that the Petitioner’s vehicle was parked in the direction that Mr. Payne traveled after the shooting. She said it was possible that the Petitioner would have had to pull forward in that direction before turning around to travel in the opposite direction, which would explain the discrepancy in her testimony. She did not recall if this was the case but agreed it was a plausible explanation.

We have reviewed the testimony, and we agree with the post-conviction court that Counsel's failure to question Ms. Sanders about this one inconsistency, in light of his effective cross-examination, did not amount to deficient performance. He asked her about multiple inconsistencies, which he highlighted for the jury in closing argument. We conclude that the Petitioner has not proven his claim of ineffective assistance of counsel in this regard, and he is not entitled to relief.

E. Requesting Sequestered Jury

The Petitioner contends that Counsel was ineffective for requesting a sequestered jury. He asserts that Counsel should have concluded that his chances of an acquittal at trial would have been higher had the jurors been able to go home each night and sleep in their own beds. He offers the bare allegation that "a non-sequestered jury is more likely to acquit than a sequestered jury." The State counters that the post-conviction court did not err because Counsel made an informed decision due to the Petitioner's lengthy criminal history and other pending charges.

The post-conviction court found:

Petitioner contends that [C]ounsel was deficient by asking for a sequestered jury. [Counsel] was asked in the post-conviction evidentiary hearing why he requested a sequestered jury. He indicated he did so because he did not want the jury to be able to do any research into the Petitioner's criminal history and other pending charges. Whether to seek a sequestered jury or not is a tactical decision. Petitioner has failed to show either "deficient performance" or "prejudice" with regard to this issue.

The Tennessee Supreme Court has previously stated that in a post-conviction case, counsel's decision about whether to request a sequestered jury was a tactical decision. *See Vaughn v. State*, 202 S.W.3d 106, 123-24 (Tenn. 2006), *abrogated by Brown v. Jordan*, 563 S.W.3d 196 (Tenn. 2018). We will not second guess a reasonably based strategic decision made after adequate preparation. *See Henley*, 960 S.W.2d at 579; *see also Pylant v. State*, 263 S.W.3d 854, 874 (Tenn. 2008). "Deference to counsel's tactical choices, however, applies only if such choices are within the range of competence required of attorneys in criminal cases." *Carpenter v. State*, 126 S.W.3d 879, 887 (Tenn. 2004) (citing *Campbell v. State*, 904 S.W.2d 594, 597 (Tenn. 1995)).

In this case, the post-conviction court found that Counsel made a tactical decision to seek a sequestered jury based upon a reasonable consideration. We agree that Counsel's decision to request a sequestered jury was a tactical decision, and that Counsel made that decision based upon adequate preparation and with reasonable considerations in mind. As such, Counsel's performance was not deficient in this regard. We find unpersuasive the

Petitioner's allegation that a sequestered jury is less likely to acquit. Here, the sequestered jury clearly considered the evidence and acquitted the Petitioner of the most serious charges he faced. The Petitioner is not entitled to relief on this issue.

F. Cumulative Error

Finally, the Petitioner asserts that he is entitled to relief under the cumulative error doctrine. The cumulative error doctrine recognizes that there may be many errors that are harmless in isolation, but "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 relief under the cumulative error doctrine, there must have been more than one actual error committed during the trial proceedings. *Id.* at 77.

Here, the post-conviction court found, and we affirm, that Counsel was not deficient. Because the Petitioner has not established multiple errors, the cumulative-error doctrine does not apply. The Petitioner is not entitled to relief.

III. Conclusion

After a thorough review of the record and relevant authorities, we affirm the post-conviction court's judgment.

S/ ROBERT W. WEDEMEYER

ROBERT W. WEDEMEYER, PRESIDING JUDGE