

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs August 15, 2023

FILED

08/24/2023

Clerk of the  
Appellate Courts

**MACK MANDRELL LOYDE v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Davidson County**  
**No. 2013-A-430 Jennifer Smith, Judge**

---

**No. M2022-01132-CCA-R3-PC**

---

The petitioner, Mack Mandrell Loyde, appeals the denial of his post-conviction petition, arguing the post-conviction court erred in finding he received the effective assistance of counsel. After our review of the record, briefs, and applicable law, we affirm the denial of the petition.

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

J. ROSS DYER, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and ROBERT L. HOLLOWAY, JR., JJ., joined.

Michael L. Freeman, Nashville, Tennessee, for the appellant, Mack Mandrell Loyde.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Glenn Funk, District Attorney General; and Vince Wyatt, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

***Facts and Procedural History***

On direct appeal, this Court summarized the facts surrounding the petitioner's convictions for aggravated burglary, aggravated robbery, and employing a firearm during the commission of a dangerous felony, as follows:

The victim testified that he was "drinking some beer" with Brandy Oldaker at his apartment in Donelson, Tennessee on the evening of September 22, 2012. After he and Ms. Oldaker "fooled around for a little bit," the victim "passed out from whatever was given to [him]." When he

awoke, the victim was “tied or bound . . . face down in [his] own couch,” and Ms. Oldaker was gone. The victim explained, “when I tried to get up I got a knee put into my back and a gun put to the back of my head. Someone stated, ‘[d]on’t f\*\*\*ing move or I will blow your head off.’” The victim admitted he did not see the gun that was placed on the back of his head, but he believed it was a revolver due to his military training. While still bound on the couch, he heard “two to three males talking about hit[ting] the back of the house.”

After the men left his apartment, the victim called 9-1-1 at approximately 11:30 p.m. When officers arrived, they removed the zip ties binding the victim’s arms and legs, and secured the apartment. The victim realized “[t]here were multiple firearms missing.” Specifically, the victim testified a 12-gauge shotgun, an AK-47, and a .22 long rifle were taken from his apartment along with his wallet, two computers, and “some tablets.” The victim’s wallet contained his debit and credit cards and his military ID. He believed the value of the stolen items totaled over \$15,000. The victim stated a camera installed above his front door had been knocked to the ground during the robbery, noting it did not record any of the events of September 22, 2012. Additionally, during his testimony, the victim reviewed photographs of his apartment and the camera which were entered into evidence. The victim’s shotgun, along with “all of the rounds that were in the shotgun and on the butt cuff that night,” and a photograph of the same were entered into evidence. The victim also identified his military ID and a Hewlett Packard notebook as items taken during the crimes, both were entered into evidence.

During cross-examination, the victim testified that Ms. Oldaker knows the [petitioner] and she may have put something in his drink to allow for the crimes. He told police officers of his suspicions and, according to the victim, officers “actually arrested [Ms. Oldaker] that night on unrelated charges.” Regarding the investigation, the victim stated he remained in the parking lot of his apartment complex while officers searched his apartment. However, at one point, officers “asked [the victim] to come back in the apartment . . . to show them where something was located that was taken.” While inside, the victim saw officers dust his coffee table, front door, and bedroom door for fingerprints.

Amber Norris, the [petitioner’s] ex-girlfriend, then testified. On the night of September 22, 2012, she locked the [petitioner] out of her apartment after he left to “go to Walmart and some things like that” and did not return before midnight. The next morning, she “stepped on a barrel of some sort of

a weapon” as she got out of bed. In doing so, she “knew that something was off,” but went to the bathroom to get ready for work. While in the bathroom around 5:30 a.m., Ms. Norris saw the [petitioner] enter her apartment through the balcony door carrying a duffle bag, a shotgun, and a “toboggan with the eye holes in it.” Ms. Norris saw a handgun inside the [petitioner’s] duffle bag and saw a card and a check with “[t]he name William Covington” sitting on her coffee table. Ms. Norris identified the toboggan the [petitioner] wore on the morning of September 23, 2012, the handgun she saw inside the [petitioner’s] duffle bag, and the shotgun the [petitioner] was holding when he entered her apartment as exhibits at trial.

When Ms. Norris left her apartment, she called the police to inform them that “something was not right . . . and [she] did not want to be involved in it.” Ms. Norris worried she would be linked to the [petitioner’s] criminal activity because he drove her car the evening of September 22, 2012 and “he brought stuff back to [her] apartment.” After explaining the situation to several officers, they escorted Ms. Norris back to her apartment where she unlocked the door and then waited outside. When officers entered her apartment, they found a woman, Meganne Ball, inside who Ms. Norris did not know.

Meganne Ball testified the [petitioner] invited her to what she believed to be his deceased mother’s apartment for breakfast on the morning of September 23, 2012. She knew the [petitioner] because he frequented the Walmart store where she worked. After finishing her shift around 7:00 a.m., Ms. Ball drove to Ms. Norris’s apartment where she and the [petitioner] took a nap. The [petitioner] left to run an errand, and while he was gone, police officers entered the apartment and searched her. Upon his return, officers arrested the [petitioner] outside Ms. Norris’s apartment.

Agent Stewart participated in the arrest of the [petitioner.] He read the [petitioner] his *Miranda* rights, and “[i]mmediately after *Miranda* [the petitioner] was like, I know I’m being arrested, I was just the lookout, I was just the lookout.” The [petitioner] continued, stating he drove “Kevin and Bryan” in a Honda Accord to the scene of the robbery, but he did not go inside the apartment. Rather, the [petitioner] maintained he served as a lookout for the two who committed the robbery. The [petitioner] told Agent Stewart he received the shotgun, bankcards, military ID, and tablet as payment for his involvement in the crimes. The [petitioner’s] statements were not recorded.

Agent Stewart and Officers Caleb Foster and Kenneth Wolfe searched Ms. Norris's apartment. Agent Stewart discovered a "shotgun under the bed in [the] bedroom, there was a military ID belonging to William Covington that was found in the living room, a backpack containing a ski mask, and a small computer." He also found a handgun under Ms. Norris's bed. Agent Stewart identified the victim's shotgun, military ID, and tablet, along with the ski mask and handgun as items connected to the victim's robbery and found at Ms. Norris's apartment.

Officer Foster's "objective was to locate the [petitioner] and take him into custody." During a protective sweep of Ms. Norris's apartment, Officer Foster "did not locate [the petitioner] but as part of the process [he] looked under the bed and [he] observed a shotgun and rusty revolver under the bed." While still inside Ms. Norris's apartment, Officer Foster looked outside the window and saw Agent Stewart "with a gentleman on the ground at gunpoint." He ran outside to witness Officer Heimback arrest and search the [petitioner] as Agent Stewart read the [petitioner] his *Miranda* rights. Officer Foster testified, "[a]fter his *Miranda* [r]ights had been read the [petitioner] made an excited utterance that he knows he's going to jail for agg[ravated] robbery." At the time, Officer Foster was "under the impression that [the petitioner] might have been involved with a burglary and that's the reason why we were out there, items that he probably took in a burglary were in [Ms. Norris's] apartment." Officer Foster heard the [petitioner] again state he "was going to jail for agg[ravated] robbery," and he also "overheard the [petitioner] tell [Agent Stewart] he was only the lookout for the robbery."

Officer Wolfe assisted in "taking photos and collecting evidence" at Ms. Norris's apartment. At trial, he identified photographs of a shotgun found under "one of the beds at the apartment." He also identified a photograph depicting a shotgun, a handgun, and a box of ammunition found underneath Ms. Norris's bed. During his investigation, Officer Wolfe saw the victim's military ID inside Ms. Norris's apartment.

Separately, Sharon Tilley processed the victim's apartment on September 23, 2012. Her duties "as a crime scene tech [were] to identify, document, collect, and preserve evidence at [the] crime scene." In doing so, Investigator Tilley processed the front door, the camera found near the front door, and the bedroom door for latent fingerprints. The fingerprints lifted from the scene matched those of the victim. Though she tested the [petitioner's] prints against those lifted from the crime scene, a positive identification was not made. Investigator Tilley admitted she did not process

the coffee table “where the zip tie was found,” the surfaces in the kitchen, or the backdoor during her investigation of the victim’s apartment. In explaining her decision as to what items she would process for fingerprints, Investigator Tilley stated:

How many items are processed is dependent upon the scene and what kind of items they are. I know in this case from my knowledge I was briefed that the door had been entered and the weapons, a laptop tablet, and a [note]book had been taken. From my experience with those types of items you wouldn’t necessarily need to handle a lot of items in order to pick up a [note]book and/or unplug it and take it with you. Typically from my experience if that item is taken then that is what is handled, they took it with them and the prints with them on the item.

The investigating officers acknowledged they did not test all available surfaces or items for fingerprints, nor did they search the [petitioner’s] cell phone after his arrest.

The [petitioner] offered no evidence at the close of the State’s proof. Subsequently, the jury found the [petitioner] guilty of aggravated burglary, aggravated robbery, and employing a firearm during the commission of a dangerous felony.

*State v. Loyde*, No. M2017-01002-CCA-R3-CD, 2018 WL 1907336, at \*1-3 (Tenn. Crim. App. Apr. 23, 2018), *perm. app. denied* (Tenn. Aug. 8, 2018).

On direct appeal, this Court affirmed the petitioner’s convictions but remanded the case for resentencing on counts one and three, and amended judgments were entered on October 10, 2018. The petitioner subsequently filed a pro se petition for post-conviction relief on February 1, 2019, arguing, in part, that trial counsel was ineffective for failing to adequately investigate the petitioner’s case. Following the appointment of counsel<sup>1</sup>, an evidentiary hearing was held on November 19, 2021, during which the petitioner and trial counsel testified.<sup>2</sup>

---

<sup>1</sup> The record does not contain a preliminary order from the trial court nor does it contain either an amended petition or a written notice that no amendment will be filed as required by Tennessee Code Annotated § 40-30-107(a), (b)(2).

<sup>2</sup> We limit our recitation of the testimony at the evidentiary hearing to that relevant to the petitioner’s issues on appeal.

The petitioner testified that trial counsel was the seventh attorney appointed to represent him on this case. According to the petitioner, trial counsel met with him once at the jail as well as at each court date. However, the petitioner believed that trial counsel continuously brushed off his concerns regarding trial preparation. The petitioner asked trial counsel to investigate the background of the State's witnesses, particularly Amber Norris. Trial counsel told the petitioner that he conducted a background check on Ms. Norris and that she did not have a criminal history. However, the petitioner later discovered that Ms. Norris was allegedly convicted of theft in White County in 2013.<sup>3</sup> On cross-examination, the petitioner acknowledged that jail records indicated trial counsel met with the petitioner more than once but insisted the records were falsified.

Trial counsel testified he was appointed to the petitioner's case six months prior to trial, and, while he received partial discovery from the petitioner's previous attorneys, he did not receive complete discovery from the State until four months before trial. On cross-examination, trial counsel testified he met with the petitioner at the jail on at least two occasions as well as at each court date. Trial counsel stated that the petitioner was adamant about going to trial despite a favorable offer from the State.

Regarding trial preparation, trial counsel was aware that he could request funds from the trial court to hire an investigator. However, he did not "feel like this case involved enough witnesses and was not complex enough to merit an investigator," and he felt that he could sufficiently handle any investigative steps on his own. Prior to trial, trial counsel spoke with Ms. Norris on the phone and discovered that her testimony was likely to hurt the petitioner. However, the petitioner refused to believe that Ms. Norris would testify against him. Additionally, trial counsel conducted a background check on Ms. Norris in middle Tennessee but did not find any convictions. Trial counsel stated that he did not check White County because the petitioner told him that Ms. Norris's "universe was pretty much middle Tennessee." Trial counsel admitted he was unaware the Tennessee Bureau of Investigation ("TBI") offered background checks for the entire state on their website. He agreed that if he had discovered a theft conviction within the statutory period of time it could have been used to impeach Ms. Norris.

Trial counsel did not speak with the victim prior to trial based on the discovery and because the victim stated that he could not identify the perpetrators. Specifically, trial counsel did not believe he would learn anything that would "break the case wide open in [the petitioner's] favor[.]" Trial counsel also did not investigate the victim's background to determine whether his military ID was genuine. Trial counsel believed it was not

---

<sup>3</sup> During the hearing, the petitioner did not introduce a copy of a judgment establishing Ms. Norris's prior conviction. Rather, he "established" his claim by submitting a pleading filed by the Department of Children's Services in a dependency and neglect proceeding.

relevant since the military ID was among the stolen items that were found in Ms. Norris's home. On cross-examination, trial counsel agreed that the victim testified the items found in Ms. Norris's apartment were his. Trial counsel testified that he took a "less [is] more" approach to cross-examining the victim because it made the victim "look better rather than worse if [trial counsel] kept at it." Trial counsel also looked into Ms. Oldaker's background and discovered a misdemeanor theft or shoplifting conviction. Trial counsel did not speak with Ms. Oldaker prior to trial, and although the petitioner believed she was an accomplice in the robbery, trial counsel was reluctant to call her as a witness. Trial counsel was particularly worried that Ms. Oldaker would implicate the petitioner if she testified.

After its review of the evidence presented, the post-conviction court denied relief, and this timely appeal followed.

### *Analysis*

On appeal, the petitioner argues trial counsel was ineffective for failing to investigate and interview the State's witnesses prior to trial, failing to call witnesses on his behalf, and failing to properly cross-examine the victim. The State contends that the post-conviction court properly denied the petition.

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

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

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

466 U.S. at 687. In order for a post-conviction petitioner to succeed, both prongs of the *Strickland* test must be satisfied. *Id.* Thus, courts are not required to even "address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.*; see also *Goad v. State*, 938 S.W.2d 363, 370 (Tenn. 1996) (stating that "a failure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim").

A petitioner proves a deficiency by showing "counsel's acts or omissions were so serious as to fall below an objective standard of reasonableness under prevailing professional norms." *Goad*, 938 S.W.2d at 369 (citing *Strickland*, 466 U.S. at 688; *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975)). The prejudice prong of the *Strickland* test is satisfied when the petitioner shows there is a reasonable probability, or "a probability sufficient to undermine confidence in the outcome," that "but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. However, "[b]ecause of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)).

## **I. Failure to Investigate**

The petitioner argues trial counsel failed to properly investigate his case. Specifically, the petitioner contends trial counsel failed to hire an investigator and adequately investigate Ms. Norris's criminal background. The State contends the post-conviction court properly found that trial counsel was not ineffective for failing to investigate.

At the evidentiary hearing, the petitioner testified that he asked trial counsel to look into the background of the State's witnesses, particularly Ms. Norris, the petitioner's ex-girlfriend. Although trial counsel told the petitioner that Ms. Norris did not have any convictions that he could use to impeach her, the petitioner later learned that she had a theft conviction from 2013. Trial counsel testified that he spoke with Ms. Norris on the phone



prior to trial and discovered that her testimony would not be helpful to the petitioner. When conducting a background check on Ms. Norris, trial counsel limited his search to counties in middle Tennessee because the petitioner told trial counsel that was Ms. Norris's "universe." Trial counsel admitted that he was unaware the TBI offered background checks for the entire state on their website, and he agreed that if he had discovered a theft conviction that it could have been used to impeach Ms. Norris. Trial counsel also testified that, although he knew he could request funds for an investigator, he did not believe it was necessary in this case because it did not "involve[] enough witnesses and was not complex enough."

The post-conviction court accredited the testimony of trial counsel, and nothing in the record preponderates against its factual findings. *See Tidwell*, 922 S.W.2d at 500. The fact that a trial strategy or tactic failed or was detrimental to the defense does not, alone, support a claim for ineffective assistance of counsel. *Cooper*, 847 S.W.2d at 528. Deference is given to sound tactical decisions made after adequate preparation for the case. *Id.* In its order denying relief, the post-conviction court concluded the petitioner failed to "present [] competent proof in [the] proceeding that could have been used to impeach [Ms. Norris]." As noted *supra*, the proof offered by the petitioner in support of this claim comes from the unsubstantiated allegation made by the Department of Children's Services in a dependency and neglect proceeding. The petitioner did not produce a certified copy of Ms. Norris's alleged conviction. However, even if trial counsel had impeached Ms. Norris using a prior conviction, there was overwhelming evidence to support the petitioner's convictions, and therefore, the use of impeaching materials on Ms. Norris would not have affected the outcome of the trial. Furthermore, although the petitioner insists trial counsel should have requested the funds for an investigator, he failed to present an investigator at the evidentiary hearing and, therefore, cannot establish prejudice. *See Black v. State*, 794 S.W.2d 752, 757 (Tenn. Crim. App. 1990). The petitioner is not entitled to relief on this issue.

## **II. Failure to Call Witnesses**

The petitioner argues trial counsel failed to call witnesses on his behalf, specifically Brandy Oldaker, who the petitioner alleged was an accomplice in the robbery. The State contends the petitioner failed to meet his burden. We agree with the State.

At the evidentiary hearing, trial counsel testified that he investigated Ms. Oldaker and discovered a misdemeanor conviction for either shoplifting or theft. Although trial counsel never spoke with Ms. Oldaker prior to trial, he was reluctant to call her as a witness because he believed she might implicate the petitioner during her testimony. As discussed above, the post-conviction court accredited trial counsel's testimony, and nothing in the record preponderates against its factual findings. *See Tidwell*, 922 S.W.2d at 500.

Furthermore, although the petitioner contends trial counsel should have called Ms. Oldaker as a witness during the trial, he failed to present Ms. Oldaker at the post-conviction hearing. “To succeed on a claim of ineffective assistance of counsel for failure to call a witness at trial, a post-conviction petitioner should present that witness at the post-conviction hearing.” *Pylant v. State*, 263 S.W.3d 854, 869 (Tenn. 2008) (citing *Black v. State*, 794 S.W.2d at 757). “As a general rule, this is the only way the petitioner can establish that . . . the failure to have a known witness present or call the witness to the stand resulted in the denial of critical evidence which inured to the prejudice of the petitioner.” *Id.* Because the petitioner failed to call Ms. Oldaker at the post-conviction hearing, he cannot meet his burden. *Id.*

Additionally, trial counsel’s testimony indicates he made a strategic and well-informed decision not to call Ms. Oldaker at trial because trial counsel believed Ms. Oldaker might implicate the petitioner during her testimony. The fact that a trial strategy or tactic failed or was detrimental to the defense does not, alone, support a claim for ineffective assistance of counsel. *Cooper*, 847 S.W.2d at 528. Deference is given to sound tactical decisions made after adequate preparation for the case. *Id.* The petitioner is not entitled to relief on this issue.

### **III. Failure to Meaningfully Cross-Examine the Victim**

The petitioner argues trial counsel was ineffective for failing to meaningfully cross-examine the victim. The petitioner contends trial counsel failed to challenge the victim’s statement that he believed the gun placed at the back of his head was a revolver as well as other statements because of the victim’s alleged military status.

At the evidentiary hearing, trial counsel testified that he did not speak with the victim prior to trial because, based on discovery, he did not believe he would learn anything that would “break the case wide open in [the petitioner’s] favor.” Additionally, trial counsel did not investigate whether the victim’s military ID was genuine. Trial counsel stated that whether the ID was genuine was irrelevant because it was found with the victim’s other stolen belongings in Ms. Norris’s apartment. On cross-examination, trial counsel testified that he took a “less [is] more” approach to cross-examining the victim because it made the victim “look better rather than worse if [trial counsel] kept at it.” Trial counsel also agreed that the victim positively identified all of the stolen items.

The petitioner does not assert how trial counsel should have cross-examined the victim differently. Because trial counsel viewed the victim as a sympathetic witness, he chose to go with a “less [is] more” approach. “[T]he severity and direction that a trial attorney cross-examines a witness is a matter of strategy, and as such, this Court must be highly deferential to trial attorneys’ decisions.” *Stitts v. State*, No. W2019-00867-CCA-

R3-PC, 2020 WL 2563470, at \*7 (Tenn. Crim. App. May 20, 2020), *perm. app. denied* (Tenn. Sept. 21, 2020) (citing *Goad*, 938 S.W.2d at 369). Furthermore, the post-conviction court accredited trial counsel's testimony, and nothing in the record preponderates against its factual findings. *See Tidwell*, 922 S.W.2d at 500. The petitioner is not entitled to relief on this issue.

### ***Conclusion***

Based upon the foregoing authorities and reasoning, we affirm the post-conviction court's judgment denying the petitioner post-conviction relief.

---

J. ROSS DYER, JUDGE