

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs June 26, 2007

**ERIC JAMES TAYLOR v. STATE OF TENNESSEE**

**Direct Appeal from the Criminal Court for Knox County  
No. 80447 Richard Baumgartner, Judge**

**No. E2006-02555-CCA-R3-PC - Filed November 9, 2007**

Petitioner, Eric James Taylor, was convicted of first degree premeditated murder and aggravated assault. He appeals the dismissal of his petition for post-conviction relief which alleged that his trial counsel rendered ineffective assistance of counsel. Specifically, Petitioner contends that trial counsel's assistance was ineffective because (1) trial counsel prevented him from testifying on his own behalf; (2) trial counsel failed to ascertain whether a certain security camera would have provided exculpatory evidence; and (3) trial counsel made promises to the jury during opening statement that she failed to fulfill. After a thorough review of the record, we conclude that Petitioner has failed to show that his trial counsel rendered ineffective assistance and affirm the judgment of the post-conviction court.

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

THOMAS T. WOODALL, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and D. KELLY THOMAS, JR., J., joined.

Albert J. Newman, Jr., Knoxville, Tennessee, for the appellant, Eric James Taylor.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Randall E. Nichols, District Attorney General; and Kenneth F. Irvine, Jr., Assistant District Attorney General, for the appellee, the State of Tennessee.

**OPINION**

**I. Background**

The facts surrounding Petitioner's convictions were summarized by this Court in the direct appeal as follows:

Mark Wayne Morton testified that he met the victim, Joy Leanne Eastridge, at a bar in Knoxville, Tennessee, on the night of September 30, 2000. They drank some beer

together and then caught a ride to the home of William Avery, a friend of Mr. Morton's. Mr. Morton, the victim, and Mr. Avery drank some beer at Mr. Avery's house. The victim then decided she wanted to return to the bar. Mr. Morton testified that he and the victim decided to walk to a nearby store to see if they could find a ride back to the bar. Mr. Avery decided to accompany them on the walk to the store. Mr. Morton stated that none of them had a gun.

Mr. Morton testified that there was a single car in the parking lot of the "Bread Box" store when they arrived. The car was pulled into the parking lot near some pay phones; a woman was on the phone. Mr. Morton stated that he walked up to the driver in the car and asked the man if he would give them a ride for a couple of dollars. According to Mr. Morton, the driver replied, "You need to back away from my-you need to get away from my car." The victim then approached the driver and asked, "Well, why can't you just give us a ride?" Mr. Morton then heard the driver say, "I got a .9 right here."

Mr. Morton testified that the victim and the driver continued to argue. Then, the woman on the phone returned to the car and got in. When the car started, Mr. Morton, Mr. Avery and the victim began walking away. The car backed up and then stopped. Mr. Morton testified that he then heard the car go into drive, and the engine "revved up real high." According to Mr. Morton, the car then took off and hit the victim, brushing Mr. Morton's back as it did so.

Mr. Morton explained that the driver's side of the car hit the victim, and her body went up on the hood. The driver then hit the brakes, and the victim rolled off the hood, landing on her head in front of the car. Mr. Morton testified that the driver "took off again and ran over her again." He stated that the driver's side wheels ran over the victim's chest. Mr. Morton described the vehicle's engine as "wide open" when the victim was hit the second time. The vehicle then left the parking lot.

Mr. Morton identified the Defendant as the driver of the car that hit the victim. Mr. Morton testified that there had been plenty of room for the Defendant to have exited the lot by pulling around him and the other two persons or by exiting in another direction. He stated that neither he nor the people he was with threatened either the Defendant or his companion. Mr. Morton stated that the driver's actions in running over the victim were "[d]efinitely deliberate."

William Avery also testified at trial, describing what happened in the parking lot. He, too, testified that, when he and Mr. Morton and the victim arrived at the Bread Box, there was a single car in the parking lot, pulled near the pay phones. A woman was on the phone, and a man was sitting in the car. He saw the victim speak to the woman on the phone while Mr. Morton spoke to the driver. The victim then began talking to the driver, and they argued. Mr. Avery testified that

the driver got “real angry.” He also testified that he heard the woman who had been on the phone tell the victim, “Bitch, you better keep your mouth shut. We are not going to give you no ride nowhere.”

Mr. Avery testified that, after the car backed up, the driver put the car into drive, and he “could hear a little bit of revving up.” The car then came “flying by.” Mr. Avery testified that he grabbed Mr. Morton out of the car’s path. He was unable to reach the victim, however, and the car hit her. Mr. Avery testified that the driver’s side front fender hit the victim and she went up on the hood. The victim then rolled off of the hood and landed in front of the car. Mr. Avery testified that the driver “[r]evved his motor up and ran over her, hit her again.” According to Mr. Avery, the driver then backed up, ran over the victim a third time, and then took off.

Mr. Avery testified that there had been plenty of space in the parking lot for the driver to have avoided them, and that there were also alternate paths out of the lot. Mr. Avery testified that the driver’s actions in hitting the victim were “no accident.” Mr. Avery also stated that he did not have a gun and did not see either Mr. Morton or the victim produce a gun. Nor had any of them threatened the Defendant or his companion.

Dolly Bice was the woman in the car with the Defendant when he ran over the victim. She had known the Defendant for several years before the offense, and his cousin was married to Ms. Bice’s sister. She stated that she was visiting her sister on the night in question and had taken several Zanax pills. The Defendant came by about midnight. About thirty minutes after his arrival, she and the Defendant decided to go to the Bread Box to use the pay phones. The Defendant drove his car, and she rode with him. She testified that no one else was at the location when they arrived and got out to use the phones. While she was on the phone she saw two men and a woman approaching. She testified that she got back in the car while the Defendant stayed on the phone.

Ms. Bice stated that, after she returned to the car, one of the men approached the driver’s side, where the door was open. He bent down and looked in the car. The Defendant then returned to the car and started it. He backed up, put the car into drive, and, according to Ms. Bice, said, “I am going to kill this bitch.” Ms. Bice stated that the two men and the woman were in the middle of the parking lot. The Defendant then “pushed the gas and ran over [the victim]-put it in reverse, backed up and put it in drive, and ran over her again.” Ms. Bice testified that the top part of the victim’s body went up on the hood of the car and then fell back down onto the ground. Ms. Bice testified that she felt the car go “up” when it ran over the victim’s body.

Ms. Bice stated that, after the Defendant ran over the victim the second time, he said, “I think I killed her.” They then left the parking lot and drove to a friend’s house. There, the Defendant parked the car and got into his other car. He told his

friend to park the original car in the driveway beside the house. The Defendant and Ms. Bice then returned to Ms. Bice's sister's house. They passed the crime scene on the way and saw police and emergency vehicles. They did not stop.

Ms. Bice testified that the Defendant contacted her later and told her that he had spoken to the police. He told her that, when she spoke to them, she should tell them "that the people at the store were trying to rob [them] and that they had a gun." However, Ms. Bice testified that, when the Defendant began driving toward the two men and the woman in the parking lot, the strangers were posing no danger to her or the Defendant.

Officer John Kiely testified that, before the Defendant was arrested, he spoke with the Defendant over the phone about coming in to talk about what had happened. Officer Kiely testified that, during this conversation, the Defendant stated, "You don't know what it's like to kill somebody." Officer Kiely and the Defendant set up a time for the Defendant to come into the station and make a statement, but the Defendant did not appear at the appointed time. The Defendant was later apprehended in another county and initially tried to hide from the officers who were making the arrest. Officer Kiely also testified on cross-examination that the Defendant told him that he had accidentally run over the victim when they were trying to rob him.

On October 6, 2000, Officer Timothy Schade examined the Defendant's car at the police department garage. During his inspection, he noted some damage on the driver's side front fender. He also took some photographs of the car. When shown these photographs, both Mr. Morton and Mr. Avery testified that the rims and tires in the photographs were not the same rims and tires that had been on the car when the Defendant ran over the victim.

Dr. Andrew William Sexton performed the autopsy on the victim. He testified that the victim had suffered multiple rib fractures, lacerations in the left lower lobe of her lung, two bruises to her heart, multiple lacerations to the left lobe of her liver, hemorrhage of the soft tissue surrounding her kidneys, pelvic bone fractures, two vertebral fractures, soft tissue hemorrhage in the pelvis, multiple contusions of the brain, and skull fractures. He also testified that the victim suffered extensive bleeding. He testified that the victim's injuries were consistent with blunt force trauma and with being struck by a motor vehicle. He could not state, however, how many times the victim had been run over. He described the cause of death as "multiple, blunt force injuries whereby she expired due to fatal injuries to her lungs, liver, spleen, and pelvis."

*State v. Eric James Taylor, Alias*, No. E2002-00966-CCA-R3-CD, 2003 WL 21542464 (Tenn. Crim. App., at Knoxville, July 9, 2003), *perm. to appeal denied* (Tenn. Oct. 6, 2003).

## **II. Post-Conviction Hearing**

Petitioner testified that trial counsel was appointed to represent him. Trial counsel met with Petitioner between eight and ten times during the pendency of his trial, sometimes alone, and sometimes accompanied by a private investigator. Petitioner told trial counsel that the victim's death was an accident but trial counsel did not believe him. Petitioner said that he and trial counsel often disagreed, and he requested the appointment of different counsel, which request was refused. Petitioner said that trial counsel relayed a negotiated plea agreement offered by the State which called for Petitioner to enter a plea of guilty to the lesser charge of second degree murder. Petitioner refused the offer. Petitioner said it felt like he and trial counsel were "enemies."

Petitioner stated that trial counsel did not call Detectives Donna Mynatt and Joseph Huckleby as defense witnesses to show the inconsistencies in the witnesses' various statements to the police as she promised the jury during opening statement. Petitioner said that he knew Detective Mynatt would not be called to testify because she had a death in the family. Petitioner did not know why Detective Huckleby did not testify.

Petitioner said that he told trial counsel that he wanted to testify at trial, but trial counsel told him that he had too many prior convictions. Petitioner believed that if he went against trial counsel's advice, he would be left without a lawyer to assist him at trial. Petitioner acknowledged that he did not tell trial counsel that he had used drugs and alcohol on the night of the killing because he thought such disclosure would hurt him. Petitioner did disclose to trial counsel that he had mental problems.

Petitioner said that a business across the street from the scene of the crime was equipped with a security camera. Petitioner said that trial counsel told him that she tried to get possession of the video camera's tape but told him that the tape had been lost. Petitioner could not recall whether trial counsel ever viewed the tape.

Petitioner testified that he did not believe it was right for the trial court to assign him a lawyer with whom he could not get along. Petitioner acknowledged that both he and trial counsel cursed each other at various times. Petitioner said that he asked trial counsel by telephone if she would request the trial court for permission to attend his grandmother's funeral. Petitioner said that trial counsel responded, "No." Petitioner said that trial counsel told him that as far as she was concerned he could get a new lawyer, and hung up the telephone.

Petitioner acknowledged on cross-examination that Ms. Bice's original statement to the police was introduced at trial. Petitioner also acknowledged that it was ultimately his decision not to testify at trial.

Trial counsel testified that she was licensed to practice law in 1991. Petitioner's family retained other counsel to represent Petitioner until the case was bound over to the grand jury, after which she was appointed by the court. Trial counsel acknowledged that she and Petitioner disagreed at various points during the preparation for trial. Trial counsel stated, however, that there was nothing in her representation of Petitioner that would cause her to seek to withdraw as his counsel. Trial counsel said that one issue before trial concerned Petitioner's request to file a continuance because members of his family were going to threaten Ms. Bice. Trial counsel told

Petitioner that they should not do so, and Petitioner filed a complaint with the Board of Professional Responsibility.

Trial counsel said that although Petitioner said that the killing was an accident, she believed that it would have been “absurd” to present such an argument in light of the eyewitness testimony and the medical evidence. Petitioner acknowledged to trial counsel that he was very angry that night, so trial counsel believed it was more appropriate to present a defense based on self-defense or attempt to persuade the jury that Petitioner was guilty of nothing more serious than voluntary manslaughter.

Trial counsel did not recall making any promises to the jury during her opening statement about calling a specific witness at trial. Trial counsel said she indicated to the jury that the proof would show that Ms. Bice had told different versions of that night’s sequence of events. Trial counsel said that both of Ms. Bice’s statements to the police were introduced as exhibits at trial, and trial counsel cross-examined Ms. Bice about the inconsistencies between the two statements.

Trial counsel said that she had lengthy discussions with Petitioner about his decision to testify at trial. In addition to his prior convictions, Petitioner had done certain things immediately after the killing which would have lent more support to a finding of premeditation and which would only be brought out if Petitioner testified. For example, after Petitioner left the crime scene, he got another car from a friend. He then drove back to the crime scene and watched the emergency medical personnel attempt to revive the victim. Trial counsel also believed that Petitioner’s decision to testify would give the State the opportunity to inquire into his motivation for changing the tires on the murder vehicle before the vehicle was inspected by the police officers. Trial counsel said that the State presented evidence that Petitioner could have driven away from the market without striking the victim. When trial counsel asked Petitioner why he did not drive away, all Petitioner said was, “Well, I’m not a punk.” Trial counsel stated that she advised Petitioner not to testify at trial, but she did not tell him that he could not testify, and the trial court conducted a *Momon* hearing.

Trial counsel said she examined the crime scene several times. She noticed a siding company across the street from the market which appeared to be equipped with a security camera. Trial counsel filed a *Brady* request for the security camera’s tape, (for exculpatory evidence pursuant to *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)). Trial counsel said that Detective Mynatt told her prior to trial that there was nothing on the tape concerning the incident. Trial counsel, however, felt it necessary to raise the issue of the videotape and requested a *Ferguson* instruction to the jury which was ultimately denied by the trial court. *See State v. Ferguson*, 2 S.W.3d 912, 917 (Tenn. 1999) (concluding that “[g]enerally speaking, the State has a duty to preserve all evidence subject to discovery and inspection under Tenn. R. Crim. P. 16 or other applicable law.”).

At the conclusion of the postconviction hearing, the postconviction court found that Petitioner had failed to establish any grounds for post-conviction relief.

### **III. Standard of Review**

A petitioner seeking post-conviction relief must establish his allegations by clear and convincing evidence. Tenn. Code Ann. § 40-30-110(f). However, the trial court's application of the law to the facts is reviewed *de novo*, without a presumption of correctness. *Fields v. State*, 40 S.W.3d 450, 458 (Tenn. 2001). A claim that counsel rendered ineffective assistance is a mixed question of fact and law and therefore also subject to *de novo* review. *Id.*; *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999).

When a petitioner seeks post-conviction relief on the basis of ineffective assistance of counsel, he must establish that counsel's performance fell below "the range of competence demanded of attorneys in criminal cases." *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). In addition, he must show that counsel's ineffective performance actually adversely impacted his defense. *Strickland v. Washington*, 466 U.S. 668, 693, 104 S. Ct. 2052, 2067, 80 L. Ed. 2d 674 (1984). In reviewing counsel's performance, the distortions of hindsight must be avoided, and this Court will not second-guess counsel's decisions regarding trial strategies and tactics. *Hellard v. State*, 629 S.W.2d 4, 9 (Tenn. 1982). The reviewing court, therefore, should not conclude that a particular act or omission by counsel is unreasonable merely because the strategy was unsuccessful. *Strickland*, 466 U.S. at 689, 104 S. Ct. at 2065. Rather, counsel's alleged errors should be judged from counsel's perspective when they were made in light of all the facts and circumstances at that time. *Id.* at 690, 104 S. Ct. at 2066.

A petitioner must satisfy both the deficiency and prejudice prongs of the *Strickland* test before he or she may prevail on a claim of ineffective assistance of counsel. *See Henley v. State*, 960 S.W.2d 572, 580 (Tenn. 1997). That is, a petitioner must not only show that his counsel's performance fell below acceptable standards, but that such performance was prejudicial to the petitioner. *Id.* Failure to satisfy either prong will result in the denial of relief. *Id.* Accordingly, this Court need not address one of the components if the petitioner fails to establish the other. *Strickland*, 466 U.S. at 697, 104 S. Ct. at 2069.

#### **IV. Right to Testify**

Petitioner argues that his trial counsel's assistance was ineffective because she prevented him from testifying on his own behalf at trial. Petitioner believed that if he disagreed with counsel on this issue he would essentially have to proceed to trial without counsel.

The trial court conducted a *Momon* hearing at the conclusion of the State's case-in-chief. Petitioner acknowledged at the post-conviction hearing that the decision of whether to testify was ultimately his, and that he told the trial court during the *Momon* hearing that it was his decision not to testify. Trial counsel testified that she and Petitioner discussed at length his decision to testify at trial. Trial counsel said that Petitioner did several things after the incident which would not have been favorable to his defense if the State had been given the opportunity to cross-examine him. Trial counsel stated that she advised him not to testify but assured him that the decision was ultimately his.

The post-conviction court found that:

[trial counsel] has been very articulate in pointing out the reasons for that decision here today, that being that there were several things that could have been brought out during cross-examination that Mr. Taylor did after the fact that were incriminating – more incriminating to him than they would have been exculpatory; that is, the changing of the tires on the vehicle and obtaining another vehicle and coming back to the scene and watching the emergency crews deal with the situation, and further, his inability to explain why he didn't take the opportunity to leave the scene of the incident rather than run over [the victim].

But most telling in this whole issue is the fact that the Court reviewed with [Petitioner] his rights with regard to testifying, explained to him that although I encourage, as I always do, for defendants to listen to their lawyers and listen to their counsel, that it was his decision as to whether or not he would testify. It wasn't [trial counsel's] decision. And [Petitioner] assured me at that time it was his decision not that he would testify.

Based on our review, we conclude that the evidence does not preponderate against the post-conviction court's finding that Petitioner failed to show that there was any deficiency in his trial counsel's assistance in this regard or that he was prejudiced by his decision not to testify. Petitioner is not entitled to relief on this issue.

## **V. Opening Argument**

Petitioner contends that his trial counsel's assistance was ineffective because she made unfulfilled promises during her opening statement. In support of his argument, the petitioner relies on *State v. Zimmerman*, 823 S.W.2d 220 (Tenn. Crim. App. 1991), in which this Court determined that trial counsel was ineffective based on cumulative error, which included counsel making a promise to the jury during opening statement, and then changing strategy in the middle of the trial without a sound reason. *Id.* at 226-28. In the case *sub judice*, Petitioner challenges the following portion of trial counsel's opening argument:

But the proof is going to show that some of [the State's] witnesses were convicted thieves. The proof is going to show that all of [the State's] witnesses had reasons to lie to you. The proof is going to show that every last single one of his witnesses has changed their story over time.

A review of the trial transcript reveals that trial counsel thoroughly cross-examined Mr. Morton, Mr. Avery, and Ms. Bice, the three eyewitnesses to the crime. Petitioner concedes that trial counsel brought out during cross-examination that both Mr. Morton and Mr. Avery had prior felony theft convictions and trial counsel exposed the inconsistencies between Mr. Morton's, Mr. Avery's, and Ms. Bice's statements to the police, preliminary hearing testimony, and trial testimony. Petitioner argues, however, that trial counsel's promise that all of the State's witnesses "had reasons to lie" included the members of the Knoxville Police Department and the Knox County Assistant Medical Examiner who also testified on behalf of the State. Petitioner contends that he was prejudiced by trial counsel's failure to present proof that these witnesses had changed their stories or had a reason to lie.

Based on our review of the trial transcript, we do not believe that Petitioner's literal reading of trial counsel's opening statements is appropriate. Trial counsel effectively and ably cross-examined the eyewitnesses to the crime as to their prior convictions and inconsistent statements. The evidence does not preponderate against the post-convictions court's finding that trial counsel generally accomplished what she set forth in her opening statement to the jury. Petitioner is not entitled to relief on this issue.

Petitioner concedes in his brief that trial counsel did not specifically promise the jury that she would call Detectives Mynatt and Huckleby as witnesses for the defense. Nonetheless, Petitioner contends that trial counsel was ineffective for not calling these witnesses to testify. Petitioner does not suggest why these witnesses would have aided his defense other than their potential testimony as to the inconsistencies in Ms. Bice's, Mr. Morton's, and Mr. Avery's statements to the police. Based on our review, we conclude that the detectives' testimony would have been cumulative at best. Petitioner has failed to show that he was prejudiced by trial counsel's failure to call the investigating officers as defense witnesses.

## **VI. Admission of Videotape**

Petitioner contends that trial counsel rendered ineffective assistance because she failed to present evidence to the trial court about the position or contents of the security videotape from the Meraserve Roofing Company which was located across the street from the crime scene.

Trial counsel filed a pre-trial discovery motion seeking access to the tape in question which was granted by the trial court. Apparently, the State did not provide the tape to Petitioner's trial counsel. Trial counsel testified at the post-conviction hearing that she discussed the Meraserve tape with Detective Mynatt prior to trial. Detective Mynatt said that the investigating officers had reviewed the tape, and the tape had not captured any portion of the incident.

Trial counsel cross-examined Officer Gerald Smith at trial about the Meraserve videotape. Officer Smith testified that the company was located across Joe Lewis Road and that "there was a possibility that those cameras could have depicted some of the scene," but that he could not determine the exact angle at which the cameras were aimed. Officer Smith said that he was not asked to seize the security camera's tape.

Trial counsel requested a special jury instruction based on *State v. Ferguson*, 2 S.W.3d 912, 917 (Tenn. 1999). According to the trial transcript, the trial court held a hearing out of the presence of the jury concerning trial counsel's requested jury instruction. The State argued at the hearing that they had reviewed the tape and it was not positioned so that the camera was focused on the parking lot of the crime scene and thus contained neither inculpatory nor exculpatory evidence. The trial court denied trial counsel's request for a *Ferguson* jury instruction, and trial counsel challenged the trial court's denial in Petitioner's direct appeal.

On appeal, a panel of this Court noted:

Defense counsel was aware of the video cameras prior to trial; she cross-examined Officer Smith about them. Yet defense counsel put on no proof through the roofing company's proprietor, or otherwise, that the video cameras contained potentially exculpatory information. It is the defendant's burden in a criminal trial to establish that the State has failed to conform with the requirements of *Brady*. See *State v. Elgin*, 902 S.W.2d 387, 389 (Tenn. 1995). . . . Nor are we prepared to fault the trial court for refusing to instruct that the State failed to preserve evidence when the existence of that evidence has never been established.

*Eric James Taylor*, 2003 WL 21542464, at \*8.

Petitioner has the burden of establishing his post-conviction allegations by clear and convincing evidence. T.C.A. \_ 40-30-110(f). Petitioner offered no evidence at the post-conviction hearing that the challenged videotape contained any evidence that was, or even potentially was, of relevance to Petitioner's case. The possible significance of the Meraserve tapes remains now, as it did at trial, mere speculation. The post-conviction court noted that it declined trial counsel's request for a *Ferguson* jury instruction as to the missing Meraserve tapes at trial because "it was established fairly in [the court's] mind that this videotape contained no evidence that would have been useful to any trier of fact in this case and, therefore, found that . . . there was no prejudice to the defendant with regard to the tape not being available for review." Based on our review, we conclude that Petitioner has failed to establish that he was prejudiced by trial counsel's conduct in this regard. Petitioner is not entitled to relief on this issue.

## **VII. Attorney/Client Relationship**

Petitioner argues in his brief that "there was a complete breakdown [in] the attorney/client relationship" which caused him to believe that he was proceeding to trial without the assistance of counsel. Initially, we note that Petitioner has failed to cite to a single authority to support this argument and has therefore waived review of the issue. See Tenn. Ct. Crim. App. R. 10(b); Tenn. R. App. P. 27(a)(7). We also observe, as does the State, that Petitioner has raised this issue specifically for the first time on appeal. See *Cauthern v. State*, 145 S.W.3d 571, 599 (Tenn. Crim. App. 2004) (stating "an issue raised for the first time on appeal is waived") (citing *State v. Alvarado*, 961 S.W.2d 136, 153 (Tenn. Crim. App. 1996)). Nonetheless, at the conclusion of its ruling from the bench, the post-conviction court alluded to the relationship between Petitioner and his trial counsel.

The post-conviction court observed:

I remember this case fairly well. I remember the trial of this case. I remember the facts of this case. I remember [trial counsel's] efforts in this regard. Of course, [trial counsel] is well known to this Court. She's tried a number of different cases. She's a very tenacious defense attorney. I'm confident that there were times when [Petitioner] and she butted heads, so to speak, and on times—I'm confident there were times when they got along very well. But there's no question in my mind that [trial counsel] zealously and competently represented [Petitioner] in this matter.

Thus, even if not waived, we conclude that Petitioner is not entitled to relief on this issue.

**CONCLUSION**

After a thorough review, we affirm the judgment of the post-conviction court.

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THOMAS T. WOODALL, JUDGE