

DEBORAH S. HUNT, Clerk

Respondent-Appellee...

O R D E R

In 2008, a jury convicted Reed of first-degree premeditated murder, Tenn. Code Ann. § 39-13-202; felony murder, Tenn. Code Ann. § 39-13-202; and aggravated burglary, Tenn. Code Ann. § 39-14-403. The convictions arose following the shooting death of the victim, Reed's ex-girlfriend, at the victim's home that she shared with her daughter. Reed was sentenced to an effective term of life in prison. The Tennessee Court of Criminal Appeals affirmed, and the Tennessee Supreme Court denied leave to appeal. *State v. Reed*, No. W2009-00589-CCA-R3-CD, 2010 WL 4544777 (Tenn. Crim. App. Nov. 10, 2010), *perm. app. denied* (Tenn. Mar. 9, 2011).

In 2011, Reed filed a petition for post-conviction relief, which the trial court denied after an evidentiary hearing. The Tennessee Court of Criminal Appeals affirmed. *Reed v. State*, No. W2012-02533-CCA-R3-PC, 2014 WL 1410304 (Tenn. Crim. App. Apr. 10, 2014).

In 2014, Reed filed the present habeas petition, claiming that: (1) his trial counsel was ineffective for failing to call a forensic expert at trial; (2) his trial counsel was ineffective because he did not “effectively address the issue of the lack of blood on [Reed]’s person and possessions”; and (3) there was insufficient evidence to sustain his convictions. The district court denied the petition, reasoning that Reed’s claims were reasonably adjudicated on the merits by the state courts, and declined to issue a certificate of appealability.

This court may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The petitioner must demonstrate “that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). If a state court previously adjudicated the petitioner’s claims on the merits, the district court may not grant habeas relief unless the state court’s adjudication resulted in “a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” or “a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d); see *Harrington v. Richter*, 562 U.S. 86, 100 (2011).

Reed’s first two claims allege ineffective assistance of counsel. To establish ineffective assistance of counsel, a defendant must show deficient performance and resulting prejudice. *Knowles v. Mirzayance*, 556 U.S. 111, 122 (2009); *Strickland v. Washington*, 466 U.S. 668, 687 (1984). “The standards created by *Strickland* and § 2254(d) are both ‘highly deferential,’ and when the two apply in tandem, review is ‘doubly’ so.” *Harrington*, 562 U.S. at 105 (citations omitted) (quoting *Strickland*, 466 U.S. at 689; *Knowles*, 556 U.S. at 123). Thus, on habeas review, “[w]hen § 2254(d) applies, the question is not whether counsel’s actions were

reasonable. The question is whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Id.*

Reed first claims that his counsel was ineffective because he failed to have an audio forensic expert analyze a male voice on a 911 recording and compare it to Reed's voice. At trial, the jury heard recordings of two 911 calls made from the victim's apartment on the night of her murder. Reed argues that the male voice heard on one of those calls was not his.

The Tennessee Court of Criminal Appeals rejected this ineffective-assistance claim on post-conviction review. It reasoned that counsel retained a forensic expert to analyze the 911 recordings but ultimately "made a reasonably based strategic decision" not to call the expert at trial in view of the expert's discovery, upon hearing an enhanced version of the recordings, that the victim used Reed's name multiple times (both his first name, Kelvin, and his nickname, Teddy) during one of the 911 calls. *Reed*, 2014 WL 1410304, at *2-4. Because "[t]he [expert's] revelation that the victim used [Reed's] name in pleading for her life" would have "bolstered an already strong case against [Reed]," the Tennessee Court of Criminal Appeals concluded, counsel did not perform deficiently by declining to call the expert at trial. *Id.* at *4.

In an attempt to challenge this ruling, Reed argues that "the name 'Kelvin' was never stated on the tape" and, therefore, further analysis of the tape would establish his actual innocence. Reed's argument—unsupported by any evidence—is insufficient to rebut the state court's determination that the expert's testimony was likely to be prejudicial. *Id.*; see 28 U.S.C. § 2254(e)(1) (providing that the determination of factual issues by a state court "shall be presumed to be correct" and may be rebutted only by a showing of clear and convincing evidence). Given the content of this 911 tape and the expert's analysis thereof, no reasonable jurist could disagree with the district court's conclusion that the Tennessee Court of Criminal Appeals' rejection of Reed's first ineffective-assistance claim was not contrary to or an unreasonable application of *Strickland* or based on an unreasonable determination of the facts.

Next, Reed claims that his counsel was ineffective because he failed to address adequately the absence of blood on Reed's person, clothing, and vehicle. According to Reed,

police found only “a speck of [the victim’s] blood” on his car. In rejecting this claim, the Tennessee Court of Criminal Appeals noted that—as Reed admitted—his counsel *did* point out to the jury during closing arguments that only a “small speck” of the victim’s blood was found on Reed’s car. *Reed*, 2014 WL 1410304, at *4. Further, during cross-examination of the State’s expert witness, counsel elicited testimony that none of the victim’s blood was found on Reed’s car keys, cell phone charger, boots, or jacket. Counsel testified that, other than pointing out the lack of blood and bringing out the fact that only a speck of the victim’s blood was found on Reed’s car, he “didn’t have that much [else] to argue” on the subject. The record therefore supports a determination that counsel did what he could to highlight the minimal blood evidence linking Reed to the murder. In light of the double deference due under *Strickland* and § 2254, reasonable jurists could not disagree with the district court’s rejection of Reed’s second ineffective-assistance claim. *See Harrington*, 562 U.S. at 105.

Finally, Reed claims that his convictions are not supported by sufficient evidence. In reviewing the sufficiency of the evidence, “the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). In a federal habeas proceeding, review of a sufficiency claim is doubly deferential: “First, deference should be given to the trier-of-fact’s verdict, as contemplated by *Jackson*; second, deference should be given to the [Tennessee Court of Criminal] Appeals’ consideration of the trier-of-fact’s verdict, as dictated by [the Antiterrorism and Effective Death Penalty Act].” *Tucker v. Palmer*, 541 F.3d 652, 656 (6th Cir. 2008).

Applying this deferential standard, the district court concluded that the Tennessee Court of Criminal Appeals did not unreasonably apply the *Jackson* standard in rejecting Reed’s claim that there was insufficient evidence to prove his identity as the perpetrator and thus to support his convictions. The Tennessee Court of Criminal Appeals reasoned that there was both direct and circumstantial evidence to permit the jury to conclude that Reed forced himself into the victim’s home and murdered her. *Reed*, 2010 WL 4544777, at *4-5. At trial, the victim’s daughter

testified that, on the night of the murder, she heard her mother and Reed “hollering” and saw Reed hold his arm around her mother’s neck with a gun pointed at her before he shot her and dragged her body into the kitchen. *Id.* at *5. The victim’s daughter then called 911 to report that Reed had killed her mother, and, at trial, she identified the voices on the 911 recordings as hers, her mother’s, and Reed’s. *Id.* The Tennessee Court of Criminal Appeals characterized the daughter’s identification of Reed as the shooter as “unequivocal” and noted that the testimony was corroborated by physical evidence collected from the crime scene, including blood samples and spent shell casings. *Id.* Moreover, the evidence showed that Reed had made at least fifty-six calls to the victim in the twenty-four hour period prior to her death, that Reed was within one half-mile of the victim’s residence before the first 911 call was made, and that the victim’s blood was found in Reed’s vehicle. *Id.*

Reed challenges the credibility of the victim’s daughter and the jury’s assessment of the evidence, but a federal habeas court “may not reweigh the evidence, reevaluate the credibility of witnesses, or substitute [its] judgment for that of the jury.” *United States v. Martinez*, 430 F.3d 317, 330 (6th Cir. 2005). Thus, reasonable jurists could not debate the district court’s conclusion that the Tennessee Court of Criminal Appeals did not unreasonably apply the *Jackson* standard in rejecting Reed’s insufficiency-of-the-evidence claim.

Accordingly, the court **DENIES** the motion for a certificate of appealability, **DENIES** the request for the appointment of counsel, and **DENIES** as moot the motion for leave to proceed in forma pauperis.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

burglary (Count 3). (ECF No. 13-1 at PageID 1277-80.) A jury trial commenced in the Shelby County Criminal Court on December 9, 2008. (ECF No. 13-5 at PageID 1313.) On December 11, 2008, the jury returned guilty verdicts on all counts. (ECF No. 13-7 at PageID 1659-60.) The trial judge sentenced Reed to life imprisonment with the possibility of parole on the murder counts and to a concurrent sentence of three years on the aggravated burglary. (*Id.* at PageID 1662.) Judgments were entered the same day. (ECF No. 13-1 at PageID 1294-96.) The Tennessee Court of Criminal Appeals (“TCCA”) affirmed Reed’s convictions and remanded the case to the trial court solely for entry of a corrected amended judgment for the aggravated burglary. *State v. Reed*, No. W2009-00589-CCA-R3-CD, 2010 WL 4544777 (Tenn. Crim. App. Nov. 10, 2010), *appeal denied* (Tenn. Mar. 9, 2011).

On March 28, 2011, Reed filed a *pro se* Petition for Post-Conviction Relief in the Shelby County Criminal Court. (ECF No. 13-12 at PageID 1753-64.) After counsel was appointed to represent Reed (*id.* at PageID 1772), an amended petition was filed on January 13, 2012 (*id.* at PageID 1765-69). A hearing on the post-conviction petition was held on October 5, 2012. (ECF No. 13-15.) The post-conviction court denied relief on October 26, 2012. (ECF No. 13-12 at PageID 1785-89.) The TCCA affirmed. *Reed v. State*, W2012-02533-CCA-R3-PC, 2014 WL 1410304 (Tenn. Crim. App. Apr. 10, 2014).

B. Procedural History of Reed’s § 2254 Petition

On April 28, 2014, Reed filed his *pro se* § 2254 Petition (ECF No. 1), which raised the following issues:

1. “Trial Counsel was ineffective for failing to have an audio forensic expert analyze male voice on 911 recording for comparison to the Petitioner’s Voice” (*id.* at PageID 5; *see also id.* at PageID 6-7; “Exhibit C,” ECF No. 1-3);

2. “Defense Counsel was ineffective for failing to effectively address the issue of the lack of blood on Petitioner’s person and possessions” (*id.* at PageID 7; *see also id.* at PageID 8; “Exhibit C,” ECF No. 1-3); and
3. “Insufficient evidence to convict” (*id.* at PageID 8; *see also id.* at PageID 9-10; “Exhibit D,” ECF No. 1-4).¹

In an order issued on October 20, 2014, the Court directed Respondent, WCF Warden Cherry Lindamood, to file the state-court record and a response to the § 2254 Petition. (ECF No. 8.)² On December 12, 2014, Warden Lindamood filed her Answer to Petition for Writ of Habeas Corpus and the state-court record. (ECF Nos. 12, 13.) Reed did not file a reply, and the time to do so has expired.

II. ANALYSIS OF PETITIONER’S CLAIMS

A. The Sufficiency of the Evidence (Claim 3)³

In Claim 3, Reed argues that the evidence is insufficient to sustain his convictions. (ECF No. 1 at PageID 8.) As support, Reed refers to the factual statements in his brief to the TCCA on direct appeal. (*Id.*; *see also* ECF No. 1-4.) Reed does not, however, present any argument as to why the evidence is insufficient. In the argument section of his direct-appeal brief, which is not referred to in the § 2254 Petition, Reed argued that the evidence was insufficient to establish that he was the person who had killed Jamison. (ECF No. 13-9 at PageID 1693-95.) The TCCA rejected that argument on the merits. *State v. Reed*, 2010 WL 4544777, at *4-5.

¹ The matter was transferred to the undersigned judge on May 27, 2014. (ECF No. 6.)

² The Clerk is directed to substitute current WCF Warden Tammy Ford for Cherry Lindamood. *See* Fed. R. Civ. P. 25(d).

³ In the interest of clarity, the Court will address Claim 3 before Claims 1 and 2.

The TCCA summarized the evidence introduced at trial. "The victim, Dorothy Jamison, and [Reed] had lived together for several years," along with the victim's nine-year-old daughter and nineteen-year-old son. *Id.* at *1. Jamison and her children moved out of Reed's home in July 2006. *Id.* Jamison and her daughter lived with Vanessa Hudson, a friend of Jamison's, until August 2006 and then with Jamison's sister, Sandra Townsell, and her husband, Donald Lewis, from August 2006 until October 2006. *Id.* In October 2006, Jamison and her daughter moved into their own apartment in Memphis. *Id.* "Ms. Hudson, Ms. Townsell, and Mr. Lewis all testified that while the victim was living with them, [Reed] would call the victim's cell phone frequently and visit their homes to speak with the victim, but the victim never allowed [Reed] into the home." *Id.* "Ms. Townsell and other witnesses testified that [Reed] was known as 'Teddy.'" *Id.*

"In the early morning hours of November 5, 2006, the victim and her daughter returned home from [] Hudson's house." The daughter was sleeping that night in her mother's bed. She testified that she

was later awakened by "hollering" between her mother and a man, whom she identified as [Reed], wearing black pants and a black coat. She testified that she saw her mother and [Reed] standing in the hallway, and [Reed] had his arm around her mother's neck with a gun pointed at her. She further testified that she saw [Reed] drag her mother to the kitchen. The victim's daughter testified that the only light was from the television in the bedroom. She testified that after she heard [Reed] leave, she got out of bed and found her mother lying in the kitchen floor. She also testified that she had not seen [Reed] inside their apartment before that night.

Id. at *2.

The jury also heard recordings of two 911 calls made from Jamison's apartment the night of the murder.

In the first 911 call, made by the victim, a female voice is heard screaming and several gunshots are also heard. The voice says repeatedly, "Please, Teddy, please!" A second 911 call was made by the victim's daughter, who stated that her mother had just been killed by her boyfriend.

Id.

Memphis Police Department ("MPD") Sergeant Barbara Javer testified at trial that she responded to the victim's apartment. According to the TCCA, Javer

testified that upon entering the apartment, she observed evidence of a fight. There was a broken chair in the living room. She found Ms. Jamison lying in a pool of blood near the back door in the kitchen. The victim appeared to have four gunshot wounds, one to her back, one to her upper left arm, and two to her left shoulder. There were blood smears and gunshot damage in the hallway and on the walls.

Id. After speaking to the victim's daughter, Javer developed Reed as a suspect. *Id.*

MPD Officer Michael Hill also responded to Jamison's residence. "[H]e testified that the front door to the apartment appeared to have been forced open, there was damage to the walls and blood on the walls, and several bullet fragments and spent casings from a .40 caliber handgun were found in the hallway." *Id.* MPD Sergeant Anthony Mullins, an expert in bloodstain pattern analysis, testified that "the blood found in the victim's apartment was transferred from the victim while the victim was still bleeding and moving through the apartment." *Id.* Mullins also concluded that "the victim had been hit with something while bleeding," and that "the victim had been moved after she fell to the floor." *Id.*

MPD Sergeant William Merritt testified that, after the police "obtained a warrant for Reed's arrest[,] Reed turned himself in to authorities." *Id.* at *3. The police located Reed's black Mercedes, which was parked at the home of a friend. *Id.* "The car was impounded and taken to the crime scene office." *Id.*

Former MPD homicide detective Thomas Helldorfer

found what appeared to be blood on the driver's side exterior door handle and the interior of the vehicle. . . . Officer Ricky Davison collected samples of the bloodstains found in the car. . . . Lawrence James, a forensic scientist with the Tennessee Bureau of Investigation, performed DNA analysis on the samples collected from [Reed's] car and . . . determined that the DNA from the blood samples collected from the outside of the car door and the inside of the car matched the victim's DNA.

Id. Detective Helldorfer "also found Defendant's employee I.D., bearing the name 'Teddy Reed' in the console of the vehicle." *Id.*

Sergeant Merritt also obtained Reed's and Jamison's cell phone records. He testified that

[t]here were 57 calls from [Reed's] cell phone number to the victim's cell phone number in the 24-hour period prior to the victim's death. The last call to the victim, which lasted 27 minutes, was placed at 2:27 a.m. on November 5, 2006. At 2:46 a.m., there was a call to [Reed's] cell phone from Deborah Hollowell. That call lasted only 28 seconds, indicating that it probably went to voicemail. The signal used to receive that call was from a cell tower located one-half mile from the victim's apartment.

Id. A custodian of records for Cricket Communications reinforced Sergeant Merritt's testimony about the number and duration of the calls made by Reed's cell phone to Jamison's cell phone prior to the murder. The records custodian also "confirmed that the call made to [Reed's] cell phone at 2:46 a.m. was received using a cell tower located within close proximity to the victim's apartment." *Id.*

Finally, the medical examiner testified that Jamison died from "multiple gunshot wounds to her head, chest, and shoulder." *Id.* As previously noted, the TCCA found that there was sufficient evidence offered at trial to support Reed's conviction. *Id.* at *4-5.

When a state prisoner's claim has been adjudicated on the merits in state court, as it has been here, a federal court can issue a writ only if the adjudication:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). The petitioner carries the burden of proof for this “difficult to meet and highly deferential standard, which demands that state-court decisions be given the benefit of the doubt.” *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (internal quotation marks and citations omitted).

Because the § 2254 Petition does not address the standards for evaluating habeas claims on the merits, it is unclear whether Reed contends that the decision of the TCCA on Claim 3 was “contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States,” 28 U.S.C. § 2254(d)(1), or whether it “was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” *Id.* at § 2254(d)(2). Because the claim fails as to all three potential avenues, it is unnecessary to decide which basis Reed intended to pursue.

First, Reed has not established that the decision of the TCCA was contrary to *Jackson v. Virginia*, 443 U.S. 307 (1979). In *Jackson*, the Supreme Court held that,

in a challenge to a state criminal conviction brought under 28 U.S.C. § 2254—if the settled procedural prerequisites for such a claim have otherwise been satisfied—the applicant is entitled to habeas corpus relief if it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt.

Id. at 324. This standard requires a federal court to examine the evidence in the light most favorable to the State. *See id.* “[A] federal habeas corpus court faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in

the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution.” *Id.* at 326. The State is not required “to rule out every hypothesis except that of guilt beyond a reasonable doubt.” *Id.* (citing *Holland v. United States*, 348 U.S. 121, 140 (1954)). “[I]t is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial.” *Cavazos v. Smith*, 565 U.S. 1, 2 (2011) (per curiam). Credibility determinations are reserved for the trier of fact and are “generally beyond the scope of habeas review.” *Moreland v. Bradshaw*, 699 F.3d 908, 918 (6th Cir. 2012) (citing *Jackson*, 443 U.S. at 330) (internal quotation marks and alteration omitted).

A state court’s decision is “contrary” to federal law when it “arrives at a conclusion opposite to that reached by [the Supreme Court] on a question of law or decides a case differently than [the Supreme Court] has on a set of materially indistinguishable facts.” *Williams v. Taylor*, 529 U.S. 362, 412-13 (2000). Here, the TCCA applied the correct legal rule from *Jackson* and from Tennessee decisions applying *Jackson*. See *State v. Reed*, 2010 WL 4544777, at *4. In essence, this is “a run-of-the-mill state-court decision applying the correct legal rule . . . to the facts of [the] prisoner’s case” and, therefore, does not “fit comfortably within § 2254(d)(1)’s contrary to clause.” *Williams*, 529 U.S. at 406 (internal quotation marks omitted).

Second, *Reed* has failed to demonstrate that the TCCA’s decision was an unreasonable application of *Jackson*. An “unreasonable application” of federal law occurs when the state court “identifies the correct governing legal principle from [the Supreme Court’s] decisions but unreasonably applies that principle to the facts of the prisoner’s case.” *Id.* at 413. The state court’s application of federal law must be “objectively unreasonable” for the writ to issue. *Id.* at 409. It is not sufficient that the habeas court “concludes, in its independent judgment, that the

relevant state-court decision applied clearly established federal law erroneously or incorrectly.” *Renico v. Lett*, 559 U.S. 766, 773 (2010) (citing *Williams*, 529 U.S. at 411). “[A] state prisoner must show that the state court’s ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.” *Harrington v. Richter*, 562 U.S. 86, 103 (2011).

Here, the TCCA explained that there was both direct and circumstantial evidence sufficient to permit the jury to conclude that Reed murdered Jamison. *State v. Reed*, 2010 WL 4544777, at *4-5. The TCCA noted that the victim’s daughter had identified Reed as the killer and described the murder and its aftermath. *Id.* at *5. The TCCA also pointed out that, “[o]n the 911 calls, a female voice can be heard screaming, ‘Please, Teddy, please,’ and the sound of several gunshots is heard.” *Id.* “The victim’s daughter identified the voices heard on the 911 call recording as her mother’s, the defendant’s, and hers.” *Id.* The physical evidence found at the crime scene corroborated the daughter’s testimony that the victim “was shot in the hallway and dragged to the kitchen.” *Id.* The TCCA also stated that Jamison’s blood was found in Reed’s car, that Reed “was within one-half mile from Jamison’s apartment shortly before the 911 call was made,” and that Reed had made “56 or 57 outgoing calls to the victim in the 24 hours prior to her death,” *id.*, including one call shortly before he allegedly arrived at her apartment.

The TCCA rejected Reed’s argument that the daughter’s use of the name “Teddy” is ambiguous because “Teddy” is a common name:

The victim’s daughter was unequivocal in her identification of the defendant as the person who shot and killed her mother. She testified as follows:

- Q. And did you tell the police who did those things to your mom?
- A. Yes, ma’am.
- Q. And who did you say shot your mom?

A. Kelvin Reed.
Q. Okay. And you call him Teddy, right?
A. Yes, ma'am.

* * *

Q. [T.S.], when [defense counsel] kept referring to "that man" like it was someone you didn't know, did you know who was in your apartment?
A. Yes, ma'am.
Q. Could you see him?
A. Yes, ma'am.
Q. Could you hear him?
A. Yes, ma'am.
Q. And who was it that was in the apartment?
A. Kelvin.
Q. Kelvin?
A. Yes, ma'am.
Q. And you told the police that didn't you?
A. Yes, ma'am.

Id. The TCCA also noted that Reed's employment identification badge had the name "Teddy Reed," and that "Reed had the name 'Teddy' tattooed on his arm." *Id.*

The evidence outlined by the TCCA provides compelling support for the jury's conclusion that Reed killed Jamison, and the TCCA's conclusion that a "rational trier of fact could have found proof of guilt beyond a reasonable doubt" was not objectively unreasonable. *See Jackson*, 444 U.S. at 324. Reed has not satisfied his burden of demonstrating that the TCCA's decision was "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Richter*, 562 U.S. at 103.

Finally, Reed has not established that the TCCA's decision was based on an objectively unreasonable factual determination. "[W]hen a federal habeas petitioner challenges the factual basis for a prior state-court decision rejecting a claim, . . . [t]he prisoner bears the burden of rebutting the state court's factual findings 'by clear and convincing evidence.'" *Burt v. Titlow*,

134 S. Ct. 10, 15 (2013) (quoting 28 U.S.C. § 2254(e)(1)). “[A] state court factual determination is not unreasonable because the federal habeas court would have reached a different conclusion.” *Wood v. Allen*, 558 U.S. 290, 301 (2010); *see also Rice v. Collins*, 546 U.S. 333, 341-42 (2006) (“Reasonable minds reviewing the record might disagree” about the factual finding in question, “but on habeas review that does not suffice to supersede the trial court’s . . . determination.”).

Here, Reed raises no specific challenge to any of the TCCA’s factual findings. The § 2254 Petition does not address the TCCA’s opinion and, therefore, does not explicitly take issue with its factual findings. Likewise, this Court takes no issue with the TCCA’s factual findings.

For the foregoing reasons, Claim 3 is without merit and is **DISMISSED**.

B. Trial Counsel’s Failure to Use an Audio Forensic Expert (Claim 1)

In Claim 1, Reed argues that his attorney rendered ineffective assistance by failing to use an audio forensic expert to compare the male voice on the 911 recording to his voice. (ECF No. 1 at PageID 5.) Reed raised this issue in his brief to the TCCA on the post-conviction appeal. (ECF No. 13-16 at PageID 2247, 2254-56.) The only factual support for this claim in the § 2254 Petition consists of the fact section of Reed’s brief to the TCCA on the post-conviction appeal. (See ECF No. 1-3.) Those excerpts reflect that Reed testified at the post-conviction hearing that a male voice could be heard on one call and that that voice was not his voice. (*Id.* at PageID 22-23.) The TCCA denied relief on the merits. *Reed v. State*, 2014 WL 1410304, at *3-4.

At the post-conviction hearing, Michael Johnson, Reed’s trial counsel, testified that he retained an expert to examine the 911 call. (ECF No. 13-15 at PageID 2185.) The expert enhanced the recording and discovered that “not only did the victim constantly call out the name Teddy, she also I think on one occasion called out Kelvin.” (*Id.* at PageID 2186.) The name

“Kelvin” could not be heard on the unenhanced recording, and Johnson believed that the State was unaware of it. (*Id.* at PageID 2186, 2187, 2204-05.) The expert recommended that he not do any further testing, and Johnson accepted that recommendation. (*Id.* at PageID 2186-87, 2205-06, 2211-12.) Both Johnson and the expert believed that a further analysis would have confirmed that it was Reed’s voice on the tape. (*Id.* at PageID 2211.) Johnson discussed his decision with other attorneys in the public defender’s office. (*Id.* at PageID 2209.) Johnson wanted to prevent the State from learning the name of his expert and using that expert in their proof. (*Id.* at PageID 2190-91.) In retrospect, Johnson wished that he had had the testing completed, because it would have eliminated an issue in the post-conviction proceeding. (*Id.* at PageID 2203-04.)

The TCCA denied relief on the merits of Claim 1, reasoning as follows:

With respect to the 911 call, trial counsel made a reasonably based strategic decision to discontinue the analysis and not to call the expert witness he had retained. We agree with the post-conviction court’s assessment that the expert’s findings would have likely bolstered an already strong case against [Reed]. The revelation that the victim used [Reed’s] given name in pleading for her life would have made the enhanced version of the 911 call more damning than the version played for the jury. Furthermore, [Reed] cannot show prejudice on this issue given the overwhelming evidence of his guilt. The victim’s daughter, who had lived with [Reed] for most of her life, identified him as the killer at trial. Additionally, the victim was heard on the 911 call repeatedly saying, “Please, Teddy, please,” as she pleaded for her life.

Reed v. State, 2014 WL 1410304, at *4.

Reed’s claim that his attorney rendered ineffective assistance is controlled by the standards stated in *Strickland v. Washington*, 466 U.S. 668 (1984). Those standards require a showing that “counsel’s performance was deficient” and that “the deficient performance prejudiced the defense.” *Id.* at 687.

To establish deficient performance, a person challenging a conviction must show that “counsel’s representation fell below an objective standard of reasonableness.”

A court considering a claim of ineffective assistance must apply a “strong presumption” that counsel’s representation was within the “wide range” of reasonable professional assistance. The challenger’s burden is to show “that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” . . . The question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom.

Richter, 562 U.S. at 104-05 (quoting *Strickland*, 466 U.S. at 687-90) (internal citations omitted).

To demonstrate prejudice, a prisoner must establish

“a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” It is not enough “to show that the errors had some conceivable effect on the outcome of the proceeding.” Counsel’s errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.”

Richter, 562 U.S. at 104 (quoting *Strickland*, 466 U.S. at 687, 693-94) (internal citations omitted); *see also Richter*, 562 U.S. at 111-12 (“In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. . . . The likelihood of a different result must be substantial, not just conceivable.”) (internal citations omitted); *Wong v. Belmontes*, 558 U.S. 15, 27 (2009) (per curiam) (“*Strickland* does not require the State to ‘rule out’ [a more favorable outcome] to prevail. Rather, *Strickland* places the burden on the defendant, not the State, to show a ‘reasonable probability’ that the result would have been different.”).

The deference to be accorded a state-court decision under *Strickland* is magnified when reviewing an ineffective assistance claim under 28 U.S.C. § 2254(d):

The standards created by *Strickland* and § 2254(d) are both “highly deferential,” *id.*[] at 689; *Lindh v. Murphy*, 521 U.S. 320, 333, n.7 (1997), and when the two apply in tandem, review is “doubly” so, *Knowles [v. Mirzayance]*, 556 U.S. [111], [] 123 [(2009)]. The *Strickland* standard is a general one, so the range of reasonable applications is substantial. [*Id.*] Federal habeas courts must guard against the danger of equating unreasonableness under *Strickland* with unreasonableness under § 2254(d). When § 2254(d) applies, the question is not whether counsel’s actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied *Strickland*’s deferential standard.

Richter, 562 U.S. at 105 (internal citations omitted).

Here, Reed cannot establish that the State’s holdings regarding his attorney’s representation was contrary to or an unreasonable application of *Strickland* or that it was based on an objectively unreasonable factual finding. The TCCA cited the correct legal rules from the controlling Supreme Court decisions and from Tennessee cases applying those decisions. *Reed v. State*, 2014 WL 1410304, at *4 (citing, *inter alia*, *Strickland* and *Lockhart*). The TCCA held that Reed had not established deficient performance, reasoning that Johnson’s decision not to call the expert to testify at trial involved “a reasonably based strategic analysis” because “the expert’s findings would have likely bolstered an already strong case against [Reed].” *Id.* “Strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable.” *Strickland*, 466 U.S. at 690. Reed makes no argument that his attorney was not fully aware of the facts or the relevant law.

Reed also does not explain how there is a reasonable probability that, had his attorney called the expert to testify, the outcome of the trial would have been different. Indeed, Reed does not address the TCCA’s opinion. The TCCA pointed out that the evidence against Reed was “overwhelming,” including, *inter alia*, the testimony of the victim’s daughter identifying Reed as the person who killed her mother and the 911 tape in which the victim pleaded with “Teddy” not to

kill her. *Reed v. State*, 2014 WL 1410304, at *4. Testimony that the victim had also referred to her killer as “Kelvin” on the 911 call would have been devastating.

Because the TCCA’s conclusion was neither contrary to nor an unreasonable application of clearly established federal law and was not based on an objectively unreasonable factual determination, Claim 1 is **DISMISSED**.

C. Trial Counsel’s Failure to Adequately Address the Absence of Blood on Reed (Claim 2)

In Claim 2, Reed complains that his attorney failed to adequately address the fact that there was minimal evidence of the victim’s blood on his person and car. (ECF No. 1 at PageID 7.) Reed’s factual basis for this claim consists of the same factual statements in his brief to the TCCA on the post-conviction appeal regarding Claim 1. (ECF No. 1-3.)

At the post-conviction hearing, Reed testified that, given the amount of blood in the apartment and the fact that the murderer apparently stepped in the victim’s blood, there “would have been blood on my brakes and the floorboard because whoever she was fighting with, they came out bloody. And they said a whole lot of blood, you know.” (ECF No. 13-15 at PageID 2141.) Instead, there was only “a speck of blood” on the outside handle to the driver’s side door of Reed’s car. (*Id.*) According to Reed, the testimony at trial was that the blood speck might have been deposited before the murder and that the victim might have “pricked her fingernail” from raising the door handle. (*Id.* at PageID 2145.) Reed also noted that there was no blood on his person or keys when he turned himself in several hours after the murder. (*Id.*)

Johnson conceded that there was only a “very small speck” of the victim’s blood in Reed’s car, although he testified that it was found on “the steering column or a steering wheel or something like that.” (*Id.* at PageID 2199.) Johnson testified that he did not know what he could

have done with that information other than to bring it out in closing arguments (*id.* at 2199-2200), which he did.

During closing arguments, Johnson emphasized the testimony that the specks of the victim's blood could have been deposited on Reed's car prior to the murders. (ECF No. 13-14 at PageID 2113-14.) He also argued that the victim frequently was in Reed's car when she and Reed were living together. (*Id.*) Johnson also emphasized that, even though the evidence at trial showed that the perpetrator left blood smears outside the victim's apartment, the amount of blood in Reed's car was minimal. (*Id.* at PageID 2116-17.) The jury was not persuaded by the evidence and argument. (ECF No. 13-7 at PageID 1659-60.)

The TCCA denied relief on the merits, reasoning as follows:

With regard to the lack of blood on [Reed] and his car, it was established at the post-conviction hearing that trial counsel raised this issue at trial. [Reed] himself admitted that trial counsel pointed out that only "a small speck" of the victim's blood was found on [Reed's] car and that there was no blood on his clothing and personal items found in the car. Furthermore, trial counsel established during cross-examination that the blood found on [Reed's] car could have been there for weeks or months before the shooting. Trial counsel also addressed this issue during his closing argument. [Reed] argues that the outcome of his case would have been different had trial counsel "hammered" this issue more during trial. However, we cannot conclude that trial counsel's performance was deficient simply because the jury rejected this evidence in favor of the overwhelming evidence of the [Reed's] guilt.

Reed v. State, 2014 WL 1410304, at *4.

Reed has not satisfied his burden of establishing that the TCCA's decision was contrary to, or an unreasonable application of, *Strickland* or that it was based on an objectively unreasonable factual finding. During cross-examination and closing argument, Johnson brought out the fact that the amount of the victim's blood found in Reed's car was minimal. Because Johnson did what Reed said he should have done and because the evidence against Reed was "overwhelming,"

the TCCA reasonably concluded that his performance was not deficient. Claim 2 is without merit and is **DISMISSED**.

* * *

Because every claim asserted by Reed is without merit, the Court **DENIES** the § 2254 Petition. The § 2254 Petition is **DISMISSED WITH PREJUDICE**. Judgment shall be entered for Respondent.

III. APPEAL ISSUES

There is no absolute entitlement to appeal a district court's denial of a § 2254 petition. *Miller-El v. Cockrell*, 537 U.S. 322, 335 (2003) (citing 28 U.S.C. § 2253); *Bradley v. Birkett*, 156 F. App'x 771, 772 (6th Cir. 2005). The Court must issue or deny a certificate of appealability ("COA") when it enters a final order adverse to a § 2254 petitioner. Rules Governing Section 2254 Cases in the U.S. Dist. Courts R. 11 (2010). A petitioner may not take an appeal unless a circuit or district judge issues a COA. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b)(1).

A COA may issue only if the petitioner "has made a substantial showing of the denial of a constitutional right," and the COA must indicate the specific issue or issues that satisfy the required showing. 28 U.S.C. §§ 2253(c)(2)-(3). A "substantial showing" is made when the petitioner demonstrates that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 336 (internal quotation marks omitted); *see also Henley v. Bell*, 308 F. App'x 989, 990 (6th Cir. 2009) (per curiam) (same). "[A] COA does not require a showing that the appeal will succeed." *Miller-El*, 537 U.S. at 337; *Caldwell v. Lewis*, 414 F. App'x 809, 814-15 (6th Cir. 2011) (citing *Miller-El*,

537 U.S. at 337). Courts should not issue a COA as a matter of course. *Bradley*, 156 F. App'x at 773.

In this case, there can be no question that the § 2254 Petition is meritless for the reasons previously stated. Because any appeal by Petitioner on the issues raised in his § 2254 Petition does not deserve attention, the Court **DENIES** a certificate of appealability.

Rule 24(a)(1) of the Federal Rules of Appellate Procedure provides that a party seeking pauper status on appeal must first file a motion in the district court, along with a supporting affidavit. However, if the district court certifies that an appeal would not be taken in good faith, or otherwise denies leave to appeal *in forma pauperis*, the prisoner must file his motion to proceed *in forma pauperis* in the appellate court. See Fed. R. App. P. 24(a)(4)-(5). In this case, for the same reasons the Court denies a certificate of appealability, the Court determines that any appeal would not be taken in good faith. It is therefore **CERTIFIED**, pursuant to Federal Rule of Appellate Procedure 24(a), that any appeal in this matter would not be taken in good faith, and leave to appeal *in forma pauperis* is **DENIED**.⁴

IT IS SO ORDERED, this 26th day of September, 2017.

s/ Sheryl H. Lipman
SHERYL H. LIPMAN
UNITED STATES DISTRICT JUDGE

⁴ If Petitioner files a notice of appeal, he must pay the full \$505 appellate filing fee, *Court of Appeals Miscellaneous Fee Schedule*, U.S. Courts (Sept. 19, 2017, 4:07 PM), <http://www.uscourts.gov/services-forms/fees/court-appeals-miscellaneous-fee-schedule>, or file a motion to proceed *in forma pauperis* and supporting affidavit in the Sixth Circuit Court of Appeals within 30 days of the date of entry of this order. See Fed. R. App. P. 24(a)(5).